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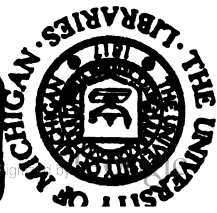
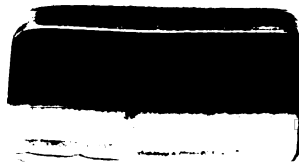
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THE
H I S T O R Y
OF THE 219
P R O V I N C E
OF
MASSACHUSETTS BAY,
FROM

The Year 1750, until June, 1774.

By Mr. HUTCHINSON,

Late Governor of that Province.

V O L. III.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.

MDCCCXXVIII. 1728

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THE people of Massachusetts Bay were never in 1749
a more easy and happy situation, than at the
close of the war with France. By the generous re-
imbursement of the whole charge incurred by the
expedition against Cape Breton, the province was
set free from a heavy debt, in which it must other-
wise have remained involved, and was enabled to
exchange a depreciating paper medium, which had
long been the sole instrument of trade, for a stable
medium of silver and gold ; the advantage whereof,
to all branches of their commerce, was evident, and
excited the envy of the other colonies, in each of
which paper was the principal currency.

They flattered themselves that Cape Breton would remain subject to Great Britain; and it was a mortification to them, that, what they called, "their own acquisition," should be restored to France; but they had nothing to fear from it, so long as peace continued. The French fishery had failed before the war, and whilst the English could catch and cure fish cheaper than the French, there was no danger of its revival.

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1749 which not only caused the territory settled to increase in value, but afforded materials for enlarging the commerce of the province.

There was but little subject for controversy in the general assembly. Governor Shirley's administration had been satisfactory to the major part of the people. There was an opposition, but it was not powerful; perhaps not more powerful than may, generally, be salutary. During the last seven years, no great change of councillors had been made at any of the elections, and they were, in general, well affected to the governor. This prosperous state of the province was very much owing to the success of his active, vigorous measures; of which he wished to give an account in person, and for that purpose had obtained leave to go to England. He had further views. Soon after the peace was proclaimed in America, the French discovered a design of enlarging their territory on the back of New York, and of taking fresh possession of the country of Acadia; and it was a common report, that French settlements were begun east of Crown Point. By a hint from the governor to some of his friends, the council and house were brought to join in an address, praying him to represent to the king the necessity of building a strong fort near to Crown Point; and of settling and fortifying a town at Chibucto, or some other harbour in Nova Scotia. The Governor of Canada had written to the Indians upon the eastern frontiers of New England, to dissuade them from a peace with the English, and a copy of the letter had been obtained by Mr. Shirley.

The contest about the bounds between the French and English in America, which was, by the treaty, to be left to commissaries, instead of being amicably settled, would probably be increased, and finally decided by the sword. It looked as if the peace could be of no long continuance. At such a time, he
thought

thought he could be of more service to himself, and 1749 to the publick, in England, than in America. He sailed from Boston in September, 1749.

Soon after his arrival in England, he was appointed one of the commissaries for settling the American boundaries. He spent much time in France with little success. The documents produced by the commissaries on each side, shewed that, on different occasions, different bounds had been assigned to the territory of Acadia. In the commission to the last French governor before the treaty of Utrecht, Acadia was made to extend to the river Kennebeck, and the whole was ceded, by the treaty, to the English. The French commissaries, notwithstanding, refused to agree to so great an extent, and confined Acadia, which they suppose in the treaty intended Nova Scotia, to the peninsula. They could no better agree upon the limits of Canada; and each party urged that their claims were strengthened by the evidence produced on this occasion.

When the Indians have taken part in a war with the French, or, by themselves have engaged in war against the English, a formal treaty of peace has always been thought expedient.

The necessary preparation for Mr. Shirley's voyage prevented his attending the treaty in person; and commissioners* were appointed, who met some of

* The commissioners from Massachusetts Bay were Thomas Hutchinson, John Choate, Israel Williams, and James Otis, Esqrs. Sir William Pepperell had been appointed at the head of the commission, but sailed for England before the treaty took place. Theodore Atkinson and John Downing, Esqrs. were the commissioners from New Hampshire.

The Indians began the treaty with an act of pleasantry and good humour. Notice had been given, that they must bring in such English captives as were among them, and particularly a boy whose name was Macfarlane, and who was taken in the beginning of the war. They apologized for not bringing Macfarlane, and feigned some excuse, promising he should be sent when they re-

1740 the principal Indians, in the character of delegates from the several tribes, at Falmouth in Casco Bay; and, after several days spent in conference, agreed with them upon terms of peace, between the provinces of Massachusetts Bay and New Hampshire, on the one part, and the several tribes of Indians situated between New England and Canada, on the other part.

The treaty made by Mr. Dummer in 1726, was considered as the basis of this, and the same articles were renewed, those only, which concerned trade, being so explained, as to take away all those pretences for discontent, which had been at different times urged by the Indians.

This treaty was scarcely finished, when an affair happened which threatened a new war. While the commissioners were at Falmouth, they were informed that a bad spirit prevailed among many of the common people of New Hampshire, and of the eastern part of Massachusetts Bay; that many threatened revenge upon the Indians, notwithstanding the peace, for the depredations made during the war; and the latter end of November, or beginning of December, an Indian was killed, and two others dangerously wounded, by some of the English in-

turned home. The commissioners shewed great resentment, and insisted upon the delivery of the captive previously to their entering upon the treaty. Some time was spent in altercation. At length an old Sachem rose up, and took one of the likeliest and best dressed young Indians by the hand, and presented him to Mr. Hutchinson, the chairman of the commissioners, as the captive Macfarlane. This increased the resentment, and it was thought too serious an affair to be jested with. The young man then discovered himself, and (having spoken before nothing but Indian), in the English language, thanked the commissioners for their kind care in procuring his redemption. He had so much the appearance of an Indian, not only in his dress, but in his behaviour, and also his complexion, that nobody had any suspicion to the contrary. He had made himself perfectly acquainted with their language, and proved serviceable as an interpreter at the French house so long as he lived.

habitants

habitants of a place called Wiscasset, in the County 1749 of York. Two persons, Samuel Ball and Benjamin Ledyte, were committed to prison, and a proclamation was issued by Mr. Phipps, the lieutenant-governor, promising a reward for apprehending a third, Obadiah Alby ; all supposed to be concerned in the murder. Agreeably to the provision in such case made by the laws of the province, a special court was summoned, and the persons, or some of them, brought upon trial. It was said, that a jury in the County of York, where the inhabitants had suffered so much from the Indians, let the case be ever so plain, would not convict an Englishman of murder for the death of an Indian. It was, therefore, moved in the general assembly, that a law should pass to empower the judges to summon a jury from another county, but the motion did not succeed ; and though one or more of the persons were brought upon trial, there was no conviction. Formerly, the people of New England had a sense of the necessity of taking away the guilt of blood from the land, by taking away the life of the murderer, which seemed to be equal to that of the ancient people of God. Many good people, at this time, lamented the disposition, which they thought was discovered, to distinguish between the guilt of killing an Indian, and that of killing an Englishman, as if God had not " made of one blood all the nations of men upon the face of the earth."

The Indians were enraged at the murder ; but by fair words, and kind deeds, ordered by government, in relieving some distressed families among them, they were kept quiet ; but, at length, despairing of justice upon the murderers, they resolved to revenge themselves upon the publick, and made an attempt to surprise Richmond fort, on Kennebeck river. Failing of success, they fell upon the inhabitants near the fort, and made several of them prisoners ; but
were

1750 were reduced to so small a number as to be incapable of much mischief; and, after a short time, the injury they received was forgotten.

In the early days of the New England colonies, Massachusetts Bay had, by mere dint of power, compelled Connecticut and the other colonies, to give way to the decision of the Massachusetts assembly, in a way that could not well be justified*. Connecticut, in its turn, now gave to Massachusetts much greater cause of complaint.

When the line between the two colonies was settled in 1713, it was agreed, that the towns of Woodstock, Somers, Suffield, and Enfield, though, according to that line, they fell within Connecticut, should remain under the jurisdiction of Massachusetts Bay, by whose inhabitants they had been settled; and an equivalent was given for the property, by an assignment of an equal quantity of uncultivated lands in the Massachusetts province. Connecticut had accepted the equivalent, had made sale of the lands, and had applied the produce to the use of that colony. The inhabitants of the towns thought themselves happy under the Massachusetts government, until they felt a greater proportion of burden from the charge of the war, than they would have done under Connecticut. At the expiration of the war, a much heavier debt also lay upon Massachusetts than Connecticut; and the relief from this debt by the grant which was afterwards made by parliament, was then uncertain. The inhabitants, thereupon, made application to the general assembly of Connecticut, and prayed to be received as under that government, and to be protected by them. Considerable sums, which had been assessed by the Massachusetts government, remained in arrear, and these they refused to pay. Notice was given by the governor of Connecticut to the governor of Massachu-

* The Author's History, vol. 1. p. 158.

setts Bay, of the application, without expressing any 1750 resolution on the part of Connecticut to grant, or to refuse their request. It was reasonable to suppose that an agreement made with great formality, and conforming to, for nearly forty years, would not be violated. The sheriffs and other officers of Massachusetts Bay, were at first opposed by the inhabitants of the towns, who resolved to stand upon their defence. The Massachusetts assembly, having, but a few years before, succeeded so ill in their controversies with New Hampshire and Rhode Island, were more easily disposed to avoid this controversy, fearing that Connecticut also, if the boundary line should be again considered at large, would not only gain the particular territory in dispute, but a large addition to it. They, therefore, did not act with their usual spirit; but rather faintly went into measures for maintaining their authority. This encouraged the assembly of Connecticut; and it then appeared, that they countenanced the revolt. After a resolve to receive the towns into their jurisdiction, they proposed to Massachusetts assembly, that commissioners should be appointed by each government, to run the boundary line; but, in their proposal, had no respect to the settlement made in 1713, which left the towns to Massachusetts Bay. The proposal in this form, was rejected; but in lieu of it, an offer was made to treat upon ways and means, in general, for preventing a controversy between the two governments. This would not answer the purpose of Connecticut. The settlement in 1713, and the equivalent received for the towns, were both acknowledged; but it was urged, that the inhabitants had an unalienable right to the jurisdiction of Connecticut, by charter, which the legislature of Connecticut could not take from them, and which the act of the inhabitants in 1713 could not take from the inhabitants in 1749. No subject affords a larger field, not for mere cavils only, but for

1750 for plausibility of exception, than that of government. Upon this feeble pretence, Connecticut supported its claim, and kept possession of their jurisdiction over the towns*. I may very justly repeat the observation, formerly made in a controversy between these two colonies, that communities or bodies of men, are capable jointly of such acts as, being the act of any one member separately, would cause him to be ashamed. It would, at least, have been decent in the Connecticut assembly, to offer to return the equivalent which their predecessors had received.

The aversion, in the common people, to a silver and gold currency, had occasioned several tumultuous assemblies in and near the town of Boston. The paper, they said, was not worth hoarding, but silver and gold would all fall to the share of men of wealth, and would either be exported or hoarded up, and no part of it would go to the labourer, or the lower class of people, who must take their pay in goods, or go without. In a short time experience taught them, that it was as

* The Massachusetts assembly kept up their claim, and made further attempts to compel the inhabitants to a submission, and, for twenty years after the revolt, assessed these towns annually to a portion of the province tax, although they never levied any part of it. At length the province agent, Mr. Bollan, was ordered to exhibit a complaint to the king in council, but, by an unaccountable neglect, it was never brought to a hearing. The case was stated by Connecticut, in their own way, for the opinion of the then solicitor-general, who since has been lord chief justice, was unfavourable to them. It was in substance as follows: that, supposing a line settled without the royal approbation, different from the line by charter, to be liable to exception if controverted in the beginning, yet after more than thirty years' acquiescence, it would not be disturbed. It is besides worth observing, that, in the statement of the case, it is not mentioned that the settlement between the two colonies in 1713, although it had not the formal approbation of the crown, was a matter of public notoriety, and although not presented to the king in form, was transmitted to England at large, to the lords commissioners of trade and plantations, with the records of the Massachusetts assembly: and, being tacitly acquiesced in, may be properly said to have received an implied approbation.

easy

easy for a frugal industrious person to obtain silver, as 1750 it had been to obtain paper; and the prejudice in the town of Boston was so much abated, that when a large number of people from Abingdon, and other towns near to it, came to Boston, expecting to be joined by the like people there, they were hooted at, and insulted by the boys and servants, and obliged to return home disappointed.

The assembly being then sitting, it was thought proper to pass an act for preventing riots, upon the plan of the act of parliament known by the name of the Riot Act, except that the penalty is changed from death, to other severe and infamous punishment*.

From an aversion to a silver currency, the body of the people changed in a few months, and took an aversion to paper, though it had silver as a fund to secure the value of it. A sufficient quantity of small silver for change could not be procured in England, when the grant made by parliament was sent to America. The assembly, therefore, ordered a deposit to remain in the treasury, of three thousand pounds in dollars, and issued small paper bills of different denominations, from one penny to eighteen pence; and every person, possessed of them to the amount of one dollar or any larger sum, might exchange the bills at the treasury for silver upon demand. The whole sum was prepared, but a small part only was issued, and scarcely any person would receive them in payment, choosing rather a base coin imported from Spain, called pistorines, at 20 per cent. more than the intrinsic value.

From the first introduction of paper money, it

* This was a temporary act, but not suffered to expire; and continued in force until riots took place to prevent the execution of acts of parliament which were deemed grievous, and then it was discontinued.

had

1750 had been the practice of government to issue bills for public charges, and to make a tax for the payment of the sum issued, in future years, into the treasury again. The bills being all exchanged by the silver imported from England, and provision made by law, that no bills of credit should ever after pass as money, there was a difficulty in providing money for the immediate service of government, until it could be raised by a tax. Few people were, at first, inclined to lend to the province, though they were assured of payment in a short time with interest. The treasurer, therefore, was ordered to make payment to the creditors of government in promissory notes, payable to the bearer in silver in two or three years, with lawful interest. This was really better than any private security; but the people, who had seen so much of the bad effects of their former paper money, from its depreciation, could not consider this as without danger, and the notes were sold for silver at discount, which continued until it was found that the promise made by government was punctually performed. From that time, the public security was preferred to private, and the treasurer's notes were more sought for than those of any other person whomsoever. This was the era of public credit in Massachusetts Bay.

Peace being restored, and the Indians upon the frontiers almost extinct, a more extensive view was opened for the enlargement of the colony. There were many judicious persons, who were content with the natural increase of the inhabitants, and with an extension of the *pomæria*, only in proportion as the interior parts became crowded, and pressed for enlargement. But there were many others, who were proprietors of large tracts of uncultivated land, which afforded no income, and some, who had obtained grants of land, which, unless cultivated within

within a limited time, were to revert to the grant. 1750
ors.

These persons endeavoured to represent the great benefit arising to the community from the speedy increase of population; and, not contented with the natural growth of a colony, which, it was then agreed, would double its number every twenty-five years, nor with such additions as might be made from other parts of the British dominions, they persuaded the general assembly to countenance and encourage their private endeavours to bring a large body of foreign protestants into the colony. They were intended not only for the frontiers, both east and west, as a barrier in case of any future rupture with Indians or French, but some were to be placed within and near the principal sea ports and large inland towns, to introduce useful manufactures.

Mr. Waldo, a proprietor of a large tract of land upon the eastern frontiers, had carried on a correspondence with Mr. Crelleies, and had, by his means, procured many emigrants from Germany, to whom conditional grants had been made by Mr. Waldo. Another person, who seemed to be of more importance, Mr. Luther, a counsellor of law in Germany, by some means or other, became a correspondent with the general assembly, and they expressed to him their desire to introduce foreign protestants, and signified to him, in general terms, that his assistance to those persons who were entering into contracts for that purpose, would be kindly received. Mr. Luther, from this correspondence, considered himself as a sort of publick person, and proposed many plans, and, probably, was at much pains, and some expense, to encourage the emigration. The expectations, neither of the emigrants which arrived, nor of the province, were answered.

Such as settled upon the frontiers suffered exceedingly,

1751 ceedingly, and many died the first winter, for want of necessary lodging, food, and clothing.

An attempt was made to settle a manufacturing German town, a few miles from Boston, within the limits of the township of Braintree; but it never flourished. The private undertakers grew discouraged; the emigrants complained of being disappointed and deserted; the assembly first slackened their correspondence with Mr. Luther, and, after a year or two, ceased answering his frequent letters, which were filled with complaint of neglect, and hard usage. Mr. Phipps, the lieutenant-governor, was concerned for the honour of the government, and repeatedly recommended to the assembly a proper notice of Mr. Luther, and a consideration of his service and expense, but without any effect. The house had been brought into the correspondence, by the influence of a few persons who deserted the cause, and were under no apparent concern at the reproaches upon government. Some of the members, both of the council and of the house, earnestly endeavoured to persuade the general assembly to do as a collective body, that, which every individual would in honour have been bound, and, perhaps by law might have been compelled to do; but they could not prevail.

Possession had been taken of the harbour at Chibucto in Nova Scotia, by the British government, the year after the peace. A plan was laid for the settlement of a fortified town, by the name of Halifax, and the plan was vigorously executed; but it appeared, that the French were more early in their measures, for, upon the arrival of Governor Cornwallis at Halifax, he found the French had taken possession of Chignecto, and had erected a fort there, and claimed the river St. John, and all Acadia, as far as Penobscot; which must cut off Nova Scotia from the rest of the British dominions upon the
the

the continent ; and that many of the French Acadians, commonly called neutrals, who had acknowledged themselves subjects of the crown of Great Britain, ever since the surrender of Acadia to Nicholson in 1710, had now declared their revolt, and their adherence to the crown of France. Mr. Cornwallis wrote, in very pressing terms, to Mr. Phipps for aid ; who recommended to the assembly the measures necessary on their part, to enable him to raise, and transport a proper force to Nova Scotia ; but they declined it.

Mr. Shirley would have had a better chance of success ; though the assembly urged, as an excuse, that they had enough to do in providing for their own security.

The lieutenant-governor had, about the same time, received information, to which he gave full credit, that the French had also taken possession of the river Lechock, within the province of Massachusetts Bay, about five leagues east of Penobscot. Governor Clinton, also, wrote from New York, that the governor of Canada was endeavouring to draw over the Indians of the six nations, and urged a meeting of commissioners from the English colonies to counteract him.

The possession of Chibucto by the English, was perfectly agreeable to the last treaty, it being a part of the peninsula of Nova Scotia to which the French made no pretence ; but Chignecto and the country of the six nations, were the territories in dispute, which, in pursuance of the last treaty, the commissaries at Paris were then litigating. Thus, before peace was fully settled, the French engaged in measures which had a direct tendency to renew the war.

There was an affair, of some importance to the province, which came under consideration in the assembly, while Mr. Phips was in the administration.

1752 tion. Many of the province laws had become obsolete ; others, by frequent additions and alterations, were perplexed and unintelligible, and had been differently understood and acted upon, at different times, and on different occasions.

The case had been much the same in Virginia, where the assembly had made a general revisal of their code of laws, except such as were personal, or of a private nature, and had framed, very successfully, a complete and well-digested body, which was well approved of by government in England. This success was the occasion of an instruction from the lords justices, the king being in Hanover, to the governor of Massachusetts Bay, to recommend to the assembly a like revisal of their laws, to be passed, and sent to England for the royal approbation.

In consequence of a message from the lieutenant-governor to the two houses, the council appointed a committee to consider the proposal in conjunction with a committee of the house ; but the house declined joining ; and, though the lieutenant-governor repeated his recommendation, they neglected or refused to comply with it.

It was allowed, that the laws were deficient, and it was evident, that, if any law should be repealed by the assembly, and other provision be made by a new law, and the king should disallow the new law, he would also disallow the repeal, and the old law would remain in force ; for the king could not disallow part of a law, and approve of other parts. This was a security for any favourite law, which the people might suspect the king wished they had not approved of. And, then, no new law could be imposed upon them ; because no alteration could be made in England, but the whole must be allowed or rejected, as it originated in the province. Many acknowledged that there was the appearance of
much

much benefit from the proposal, and they could not see any danger. A majority, however, were jealous of a latent design. They feared, that, in the prosecution of the business, a way would be found to give a new construction to some of their laws, especially some which respected the ecclesiastical part of the constitution. It was also a part of the plan, and very necessary, that there should be a clause in every law, suspending the operation of it until the king's pleasure should be known. A prejudice had long lain upon the minds of people against such a clause, though it is not easy to conceive of any inconvenience which could arise from it; and it was added, that, in the present state of the laws, the people were well satisfied; that the effect of alterations was uncertain, and that, therefore, it was best not to attempt them*.

Mr. Phipps's administration was short, and, as that of a lieutenant-governor had generally been, quiet. Mr. Shirley arrived in Boston from England, August 6th, 1753. He made an ill-judged step when he was in France, which he had reason to repent of as long as he lived. At the age of three-score, he was captivated with the charms of a young girl, his landlord's daughter in Paris, and married her privately.

When he came back to England, he would have concealed his match. Lord Halifax had heard the report, but did not credit it, until some of her letters were shewn him, which had been privately

* A year or two after, the house, upon the motion of one of the members, appointed a committee to join with a committee of council in revising the whole body of laws, and making such amendments, repeals, &c., as should be judged necessary. The council in their turn then refused a concurrence with the house. Thus a measure failed, which if it had been prosecuted, might have been very beneficial to the province.

taken

1753 taken out of Mr. Shirley's desk, by persons who wished to defeat his design of obtaining a better government, and to oblige him to return to New England. This imprudence lessened him in Lord Halifax's esteem; and, though he had shewn himself to be very capable of his trust of commissary in France, as well as very faithful in the discharge of it, yet, as he failed of success, which, more frequently than real merit, entitles to reward, his private fortune was much hurt by his employment. His allowance being four pounds only per diem, he used to say, it did not cover his necessary expense in that publick character. The rumour of his marriage came to New England before his arrival, and some who were not well affected to him, were ready enough to insinuate that his French connexions might induce him to favour the French cause, but his conduct evinced the contrary. He pronounced an accommodation desperate, that the sword must settle the controversy, that it ought to be done without delay, otherwise the French would make themselves too strong for all the force the English could bring against them.

A session of the general assembly was held soon after his arrival*, in which the two houses politely thanked him for his services during his absence. This was a short session, not intended for the general business of the province.

In his speech at opening the next session†, he set forth at large his services in England and France, which indeed were of general concern to the British Empire, but they respected the colonies, and particularly Massachusetts Bay, more than any other parts, and he urged the assembly to make him an adequate consideration.

* September 5, 1753.

† December 4, 1753.

It

It has always been the expectation of the crown, 1753 that the salaries of the governors should be continued to them, whenever they are absent with leave, and that one-half should be allowed to the lieutenant-governors or commanders-in-chief in such absence; but the Massachusetts assembly would never allow a salary to a governor in his absence, and their grants to the lieutenant-governors never exceeded, and were often short of, one-half the usual salary to the governor.

The assembly, about three months before Mr. Shirley left the province, had made him a grant of his salary for a year to come; it seemed, therefore, to be the mind of a great part of the house, not to grant any further salary until nine months had passed after his return; but his friends carried a vote for 1400*l.* lawful money, which was equal to 1050*l.* sterling. This was more than they expected, and they wished he would be contented with it; but he delayed giving his assent to the grant, and by repeated messages, long, and argumentative, one following on another, urged the increase of the sum; and insisted on a voyage to Cape Breton, at the request of the assembly in 1745, for which a grant was made by the assembly of that day, of 300*l.* sterling, and which he then declined accepting, lest it should be a prejudice to him in England, from whence he expected a reward adequate to his services, but had been disappointed. The house excused themselves by observing, that, if he had taken the grant at that time, it would have been added to the charge of the expedition to Cape Breton, and would have been reimbursed by parliament. He would not allow this to be a proper article of charge. He generally urged the measures which he proposed to the assembly, as far as he could without worrying them and putting them out of
C temper,

1753 temper, and no further. He pressed them too hard in this instance, and they sent him an angry message, and not only peremptorily refused to enlarge the grant, but gave this reason for it, that if his services and their payments since his appointment to the government could be fully stated, the balance would be in their favour.

He was hurt by this message, but though he wanted money, he had other views of more importance than a few hundred pounds, and it would not consist with those views to be upon ill terms with the assembly.

From the beginning of his administration, until the year before he went to England, he had been constantly employed in projecting and prosecuting plans, offensive or defensive, against the king's enemies. At this time it was the general opinion in England and in America, and we must suppose it was his opinion, that the French were engaging in such encroachments as would make a new war unavoidable, and the longer the encroachments should be permitted, the more difficult it would be to remove them. A regard, therefore, to the public interest, seemed to call upon him to promote a war. He had a fair prospect, in this way of forwarding his private interest. Nine years only had passed since he commenced soldier. He stood forward, however, in the list of colonels in the army; and in case of war, expected a regiment, and to be made a general officer. He not only urged the necessity of opposing the French, and removing the settlements they were making in the controverted territory, but he recommended to the Massachusetts assembly to extend their own settlements into such part of this territory, as is included within their charter, that they might be beforehand, and put themselves on the defensive.

In

In Acadia, the French had taken possession of 1754 the Isthmus, near Bay Vert, and had built a fort there, which secured their passage to Quebec without going upon the ocean. They had a block-house about thirteen miles distant from this fort, towards Chignecto, and three miles further, they had a large and strong fort, within half a mile of the basin of Chignecto, at the bottom of the bay of Fundy. Up the river St. John's, they had also built two forts, before the peace of Utrecht. These they now repaired and fortified. Of all this, there was undeniable evidence.

There was also a rumour, that they had begun a settlement near the river Kennebeck, which is in Massachusetts province, and so had secured the carrying place from that river, to the river Chaudiere. It soon obtained credit, though really there were no grounds for it,

They had forts upon the back of Virginia, Pennsylvania, and New York, before the war of 1744. The journal of an English trader, who was taken prisoner upon the river Ohio, soon after that war began, mentions his being carried from fort to fort, until he arrived at Quebec, and gives an account of other forts, twenty or thirty miles distant one from the other, between the Ohio and the Mississippi. It is probable, they had built other forts since the last peace; besides one, which was more considerable than the rest, to which they gave the name of Fort du Quesne, within the colony of Virginia. But a report, that they had built a fort eastward of, and not far distant from Crown Point, which was more alarming to the western part of Massachusetts Bay, than any of the rest, was not well founded.

Thus stood affairs between the English and French in America, in the beginning of the year
C 2 1754,

1754 1754, when government in England thought fit to recommend a convention of delegates from the assemblies of the several colonies, to be held at Albany, in the province of New York. The city of Albany is the place where the Indians of the six nations had generally been treated with, either by the governors of New York, or by governors or commissioners from any other colonies; and as large presents were to be made this year to the Indians, and the French were using every art to bring them over to the interest of France, it was thought proper at such a time, to have the joint council of all the English colonies.

Insinuations had been made, that there had not been a fair and full distribution of the former presents to the Indians, and this was said to be one reason why the distribution at this time was ordered to be made by all the colonies, and not left to New York alone, as had been usual. But the principal design of this meeting seems to have been, to unite the colonies in measures for their general defence, and to settle a quota of men and money, whenever they might be necessary against a common enemy.

The letter from the secretary of state by order from the king, was directed to the governor of New York, who was required to notify the governors of Virginia, Maryland, Pennsylvania, New Jersey, Massachusetts Bay, and New Hampshire, by name, of the time of the meeting, and also to endeavour to prevail on any other colonies to join in the treaty.

Virginia, and New Jersey, though expressly named, did not send commissioners. Connecticut and Rhode Island were the only colonies which sent, of those who were not expressly named. This was an assembly the most deserving of respect of any which had been convened in America, whether we consider

consider the colonies which were represented, the 1754 rank and characters of the delegates, or the purposes for which it was convened*.

After "brightening the chain," to use the Indian metaphor, between the British colonies, and the six nations with their confederates, a representation to the king was agreed upon, in which were set forth the unquestionable designs of the French to prevent the colonies from extending their settlements, a line of forts having been erected for this purpose, and many troops transported from France; and the danger the colonies were in, of being driven by the French into the sea, was urged.

The commissioners then proceeded to the consideration of a plan for the union of the colonies. The king, in his instructions for this convention, proposed that a quota should be settled, and that, by acts of the respective assemblies, this should be established as the rule for raising men and monies. The plan for a general union was projected by Benjamin Franklin, Esq., one of the commissioners from the province of Pennsylvania, the heads wherof he brought with him.

A representation was proposed by delegates from each colony, to be chosen by its assembly. The president was to be appointed by the crown. The delegates to be newly elected once in three years. The president to have a negative upon all acts: the acts were to be sent to England for the king's allowance or disallowance; if not disallowed in three years, they were to be considered as if expressly allowed. This assembly was to have power to make peace with, or declare war against the Indians; to enact laws for the regulation of the

* The delegates from Massachusetts Bay were John Chandler and Thomas Hutchinson, of the council; Samuel Welles, John Worthington, and Oliver Partridge, of the house.

Indian

1754 Indian trade; to purchase from the Indians, for the crown, such lands as are not within the bounds of any colony, or which may not be within such bounds, *when some of the colonies shall be reduced to more convenient dimensions**; to grant such lands upon quit-rents, to be paid into the general treasury of the colonies for the purpose of making settlements; to make laws for regulating such settlements, until the king forms them into governments; to raise and pay soldiers, and to erect forts for the defence of the colonies; to build ships of war for protection of trade on the ocean, as well as on the lakes; and for these purposes to impose and levy such imposts, duties, and taxes as may be just and reasonable. These were the capital parts of the plan.

Previously to any debate upon it, a doubt arose, whether an act of parliament was not necessary to establish such an union. The charters and commissions by which the powers of government were granted to the colonies, gave no authority to form one general government over the whole. It might be said, if the king could give and grant powers of government separately to each colony, he could do the like to the whole collectively; but this would be altering the powers given by charter, if a new government was appointed over the inhabitants for any purposes to which the government by charter was constituted; and, as the power of parliament had not then been called in question, an act of parliament was judged necessary for removing all exception, and made part of the plan.

Some of the delegates had very full powers, while others were limited, and held to make report to their

* I am not now able to ascertain the colonies to which Mr. Franklin had a special reference. Probably Connecticut was one, and perhaps Virginia another. This reduction could be made only by authority of parliament.

constituents

constituents. This plan, therefore, though unani- 1754
mously voted, was to be of no force until confirmed
by the several assemblies.

Not one of the assemblies from Georgia to New
Hampshire, when the report was made by their de-
legates, inclined to part with so great a share of
power as was to be given to this general government.

The plan met with no better fate in England. It
was transmitted, with the other proceedings of the
convention, to be laid before the king. The conven-
tion was at an end; and no notice was afterwards
publicly taken of the plan. To erect a general go-
vernment over the whole, though in its original form-
ation it might be limited to special purposes, was a
matter of great importance, and of uncertain conse-
quences, men in possession of power being gene-
rally inclined to amplify their jurisdiction; and some
of the delegates who agreed to it in Albany, doubted
whether it would ever be approved of by the king,
the parliament, or any of the American assemblies.

Mr. Shirley seems to have been in favour of an
assembly to consist of all the governors of the colo-
nies, and a certain number of the council of each co-
lony, with powers to agree upon measures for the
defence of the colonies, and to draw upon the trea-
sury in England for money necessary to carry such
measures into execution; for the reimbursement
whereof, a tax should be laid on each colony by an
act of parliament. This plan was communicated by
Mr. Shirley to Mr. Franklin, one of the delegates from
Pennsylvania, who a few months after the conven-
tion ended, went to Boston. Mr. Franklin defended
his own plan, and took exceptions to Mr. Shirley's in
several very ingenious letters. Upon this occasion,
much was said in favour of an exemption of English
subjects in the colonies from tax, unless by their re-
presentatives, of which they had none in parliament.
The restrictions laid by parliament on the commerce
of

1754 of the colonies, were considered as "secondary" taxes, of which they did not complain, though they had no share in laying, or disposing of them; and the benefit arising to the kingdom from these restrictions, was deemed a full equivalent to what was saved to the colonies, by an exemption from what might be called "primary" taxes, or such as should be laid in another form, and appropriated by parliament. Upon the whole, however, Mr. Franklin concluded in favour of a more intimate union with Great Britain by representatives in parliament, and he was of opinion that such an union would be very acceptable to the colonies, provided they had a reasonable number of representatives allowed them, and that all the old acts of parliament restraining the trade, or cramping the manufactures of the colonies, be at the same time repealed, and the British subjects there, be on the same footing, in those respects, with the subjects in Great Britain, till the new parliament, representing the whole, shall think it for the interest of the whole, to re-enact some or all of them: not that he imagined so many representatives would be allowed the colonies, as to have any great weight by their numbers; but he thought they might be sufficient to occasion those laws to be better and more impartially considered, and perhaps to overcome the private interest of a corporation, or of any particular set of artificers or traders in England. He looked upon the colonies as so many counties gained to Great Britain, and all included in the British Empire, which had only extended itself by their means* ; and it was of no importance to the general state whether

* It will be difficult if this principle be admitted, to justify the revolt of the colonies, in which Mr. Franklin was very instrumental. He departed from his principles, and declared, fifteen years after the date of those letters, that he was of opinion, Britain and the colonies were under separate legislatures, and stood related as England and Scotland stood before the union.

a merchant, a smith, or a hatter, grew rich in Old 1754 or New England, any more, than whether an iron manufacturer lived at Birmingham or Sheffield, or both, seeing they are still within its bounds, and their wealth and persons at its command*.

This correspondence was carried on with great privacy. Mr. Shirley saw that his assembly had no disposition to adopt the Albany plan of union, and he took no public part, but left them to themselves.

The representation of the imminent danger to the colonies from the French encroachments, probably accelerated those measures in England which brought on the war with France.

While the convention was sitting, and attending principally to the frontiers of the colonies in the western parts, Mr. Shirley was diligently employed in the east, prosecuting a plan for securing the frontiers of Massachusetts Bay.

A rumour sometimes obtains credit, because the subject, from the nature of it, is probable. From the rumour of a French settlement between Kennebeck and Chaudiere, it was urged, that this must be a very fit place for a French settlement, or there would be no such rumour.

The Massachusetts assembly was influenced by the friends of the governor, to address him to raise a small army, and to order a detachment to this supposed settlement, and, if the rumour should be well founded, to break it up; and, at all events, to secure by forts the passes from Quebec, for New England, by the way of Kennebeck. The assembly also desired him to go into the eastern part of the province, and there to take upon himself the immediate direction of the affair. He accordingly made a voyage from Boston, to Falmouth in Casco Bay, and took with

* Those letters were first published in the London Magazine, for February, 1766.

him

1754 him a quorum of his council, and several principal members of the house, who, having, by their advice, been instrumental in promoting his measures, would think themselves bound, upon their return, to promote a sanction of them in the general assembly.

He first held a treaty or conference with the Indian chiefs at Falmouth, to prevent their being alarmed from fear of hostilities against them; and then ordered the forces which he had raised, consisting of eight hundred men under the command of Mr. John Winslow, who had been a captain in the royal army at the siege of Carthagene, and was on half pay*, to the river Kennebeck. There they first built a fort, about three quarters of a mile below Tacomick falls, and about thirty-seven miles above Richmond fort. This new fort took the name of Halifax, out of respect to the then secretary of state. A number of persons who claimed a tract of land upon this river, under a long dormant, and lately-revived grant from the assembly of the colony of New Plymouth, obtained leave from the governor to erect another fort, eighteen miles below the first, at a place called Cushnock. This he called Fort Western from a gentleman of his acquaintance in Sussex, in England; and in each fort a garrison was placed in the pay of the province.

Five hundred men then marched to what was called the carrying-place, and to a pond which they supposed to be half way over it, without finding any marks of French or Indian settlements, made or intended to be made; and then returned to Casco Bay.

Thus ended this expedition, which was very expensive; and though it was, in every part of it, the project of the governor, yet, as it had the appear-

* Upon this occasion the governor gave him a commission with the rank of provincial major general.

ance

ance of originating in the assembly, there was no 1754
room for complaint. Besides, it was said by the
governor, that the forts built on the Kennebeck, in the
vicinity of this carrying-place, would be a check
upon the Indians, who, in time of war passed over it.

The expense was to no beneficial purpose. Both
French and Indians soon ceased from any thoughts
of taking possession of the British territories, and
their attention was taken up, in defending them-
selves against the vigorous measures of their pro-
voked enemies.

Soon after governor Shirley's return to Boston
from this expedition*, he received letters from the
secretary of state, signifying his majesty's pleasure,
that, in concert with colonel Lawrence, lieutenant
governor and commander-in-chief of Nova Scotia,
he should take the most proper measures for re-
moving the subjects of the French king from the
forts in that province; and, in the winter following,
lieutenant-colonel Monckton came to Boston, with
proposals from colonel Lawrence for raising two
thousand men, to be employed in this service.

They were to be raised by enlistment, and though
they were to be carried out of the province, it must
be with their own consent. The charge also of
raising, paying, transporting, &c., was to be paid by
the crown. It seemed, therefore, that there was no
occasion for meeting the general assembly. But the
governor knew, that it would much forward the
enlistment, if he could give the assembly a favourable
opinion of the expedition. In a very long speech,
he therefore laboured to set before them the danger
to which the whole British interest in America, as
he alleged, would be exposed, if these encroach-
ments were suffered to continue; and that if this
critical opportunity should be lost, it would be much

* In October, or November 1754.

more

1754 more difficult to remove them hereafter. Mr. Shirley had one peculiar advantage for promoting his military schemes in the assembly. Many of the field officers and others who were at Louisburg, and in other services, the last war, were now members of assembly, and the more readily fell in with his proposals. At this time, the assembly not only acquiesced in the governor's proposals, but the members in the several parts of the province encouraged the enlistment, and the proposed number was complete sooner than expected ; and sooner than otherwise it would have been, by assurances that the governor himself would take the command of the whole battalion, and that major-general Winslow would be the next officer ; and Mr. Winslow was made to believe it also. It is not probable, that Mr. Monckton, who had the rank of lieutenant-colonel in the army, ever intended to serve under Mr. Winslow, who had only the rank of captain. There was the appearance of discontent, on the part of Mr. Winslow, when colonel Monckton's claim to the superior command first transpired. Governor Shirley managed the affair very skilfully. The business of the province would not admit of his leaving it, and, though it was called his regiment, he could not take the command in person. A commission for the first battalion was given to Mr. Monckton, and Mr. Winslow was brought, upon such consideration as was thought fit, to be content with the command of the second.

The only inconvenience to the province, from this expedition, was the loss of the men who enlisted, which increased the difficulty of raising men for further services. For, when the governor had brought the assembly to an acquiescence, and had secured the enlistment, he opened to them a further part of his plan ; which would take both men and money from the province,

The

The rumours of a French fort near to Crown Point, it was now acknowledged, were groundless, but it was certain that there was a rocky eminence, which would command Crown Point fort, and the governor proposed, that whilst the expedition was going on against the French forts in Nova Scotia, which must draw the attention of the French in Quebec, to that province, possession should be taken of this eminence, and a strong fort be erected there, and well garrisoned. This would be a security to the frontiers of the English colonies against the inroads of French and Indians, and would be a good post from whence parties of English, and Indians in their interest, might issue to make depredations on the French; and, whenever it should be thought proper to make an attempt upon Crown Point, by means of this post such attempt would be much facilitated.

The assembly thought favourably of the project. They did not, however, immediately resolve to make provision for the charge which must attend it, but desired the governor to carry it on at the charge of the crown, and gave their opinion, that he would run no risk in it. He, on the other hand, recommended to them to raise the money necessary for the purpose, and intimated to them, that they had no more reason now to distrust his majesty's paternal regard, in affording them relief, so far as they should overburden themselves, than they had when they engaged, the last war, in the successful expedition against Louisburg. Many members, who would not otherwise have been in favour of the proposal, were made to believe that the charge would be repaid; and a majority of the house came to a resolve, to desire the governor to engage in an attempt to erect a fortress near to the French fort at Crown Point, and *to repel and revenge any hostilities which might be offered to his majesty's forces, whilst they*

1755 *they should be employed in that service.* This they did, in humble trust that his majesty would be graciously pleased to relieve the province from the expense of this undertaking, though, at all events, they would not leave the governor to suffer.

Thus the assembly was brought, expressly to desire the governor to oppose the French by force, if they should interrupt the English ; which looks as if he had some doubts whether he did not run a risk of the measures not being approved, and imagined such a desire would be of service to him in England.

Although he considered the Massachusetts as the leading colony, yet he designed to engage other colonies to take part with it. Less than five thousand men was deemed insufficient. The Massachusetts assembly resolved to make provision for the pay and subsistence of one thousand two hundred. It was proposed, that New Hampshire should raise six hundred, Rhode Island, four hundred, Connecticut, one thousand, and New York, eight hundred ; and as the governor and Sir William Pepperell had, each of them, been ordered by the king to raise a regiment upon the establishment, it was part of the plan that those regiments should join.

New Jersey, it was expected, would make some addition, and Pennsylvania, which* scrupled raising men, was desired to contribute to the charge by raising provisions. Commissioners were sent from Massachusetts to each of the other colonies to solicit a junction.

The governor was much at a loss for a proper general. Mr. Hutchinson, who had been one of the commissioners at Albany, proposed to him colonel Johnson, one of the council at New York, who was also a commissioner at Albany. Governor Shirley

* The majority of the people were quakers, or under their influence.

Shirley

approved of the proposal, but doubted whether the 1755 assembly would not dislike his appointing a general who lived in another province. The assembly were brought to acquiesce, by being informed, that no man had so great an influence over the Indians as colonel Johnson, and that he would, undoubtedly, be the means of bringing several hundred to join in the expedition.

The commissions to the general officers then came to be considered. It was a new case, and it was judged necessary that each governor in the colony, where any forces of which the army consisted, were raised, should give commissions to the general officers, and that the regimental commissions for each colony should subject the regiments to such general command.

While preparations were making for the expeditions to Nova Scotia and Crown Point, general Braddock arrived in Virginia from England, and immediately gave notice to governor Shirley, and to several other governors, to meet him at Annapolis, in Maryland, in order to consult upon measures for his majesty's service. The place was afterwards changed to Alexandria.

At this meeting, the expedition to the west, under general Johnson, as well as that to Nova Scotia, under colonel Monckton, was approved of; and it was determined, that another expedition should be formed against Fort du Quesne, upon the back of Virginia, with a force under general Braddock, consisting of two regiments which he brought with him from England, two independent companies which were posted at New York, and so many provincials, to be raised in the southern colonies, as should amount in the whole to two thousand four hundred men. It was further determined that the two newly raised regiments of Shirley and Pepperell, with five hundred men, raised in New Jersey, and three hundred, of the one thousand two hundred raised
in

1755 in Massachusetts, and which had been destined for the expedition to Crown Point, should be taken from that service, and employed under governor Shirley, in an attempt to dislodge the French who were posted at Niagara, in a fort there. Thus there were four expeditions on foot at the same time, in three of which the Massachusetts had a share.

The success was various. That to Nova Scotia answered expectation. The French forts at Beau Sejour were taken*; and, thereupon, those at the river St. John were abandoned.

That under general Braddock was entirely frustrated. In marching through the woods, when about ten miles distant from Fort du Quesne, the army was surprised by an attack, on every quarter, from an invisible enemy†. A body of French and Indians, having been posted, every man behind a tree, at a convenient distance, made a sudden fire upon them, and killed and wounded a great number. They could not see, but they could hear their enemies; and the yells of the savages, which of all noises is the most horrid, added much to the terror with which the army was seized. The fire was returned, but to little purpose. The general was mortally wounded; his secretary, eldest son to governor Shirley, shot through the head. Sir Peter Halkett, and many of the officers were among the slain; Sir John Sinclair, and many others, among the wounded. The army retreated under the command of lieutenant-colonel Gage. General Braddock died in the woods soon after the action.

His body was buried in the most secret manner, to prevent indignities from the savages, if the place should be discovered by them. And thus ended this unfortunate expedition‡. There was not the

* June 16th, 1755.

† July 9.

‡ The news of this defeat was brought to Boston, by express, from New York, July 23d.

least

least apprehension of a force in that quarter, equal 1755 to that of the English. Much confidence was placed in an experienced English general. All this tended to make the disappointment greater.

The main strength of the enemy was expected to oppose the army destined to Crown Point: neither the general, nor the greater part of that army, had ever seen service. Some part of the officers and men had been employed in the last war against Louisburg. The news of Braddock's defeat might well cause a general despair of Johnson's success.

Soon after, letters were received from him by lieutenant-governor Phipps, governor Shirley being absent, urging an immediate reenforcement of the army then under his command at or near lake George. He had not only received advice that the strength of the enemy was superior to what had been expected, but his own strength was inferior to what he had been made to believe he might depend upon, when he accepted of the command. It is doubtful whether Mr. Shirley ever intended that the two regiments of regular troops should serve under a provincial general; but the deduction of the Massachusetts and New Jersey forces he could not have in view. General Johnson was not only disappointed, but was much displeased; and it caused a breach between him and governor Shirley, to whom he supposed it to be owing, which was never made up.

At best, the issue of this expedition was very doubtful, and every man who had the interest of his country at heart was full of anxiety.

Such extraordinary incidents as had given success, beyond all rational probability, to the expedition against Louisburg*, and in as wonderful a manner had

* In my former history I have taken notice of some of these incidents. One more, very remarkable, has since come to my knowledge.

1755 had defeated the expedition under the Duke D'Anville, it was presumption to expect.

The Massachusetts assembly stood prorogued to the 24th of September. The lieutenant-governor was advised to order a special session, by proclamation, on the 5th. There had been no precedent for this in the province. Recourse was had to precedents in parliamentary proceedings. When the Dutch threatened an invasion in 1667, King Charles II., having prorogued the parliament to October 10th, called, by proclamation, an intermediate session on the 25th of July. The Dutch did what mischief they could, and withdrew their ships. The parliament was again prorogued to the 10th of October, and, as no business was done, there was no room to call in question the validity of any proceedings.

The necessity of the case induced Mr. Phipps to comply with the advice given him, and the assembly, having sat every day, Sunday included, from the 5th to the 9th, and made provision for raising two thousand men as an additional force, were prorogued to the 10th of October; when it was thought proper, by an act passed for that purpose, to establish all the proceedings of the intermediate session. Some of the council opposed this measure, lest it should be urged, in future time, as an objection to the proceedings of any intermediate session, and sufficient ground for a refusal to obey them, which might be of very bad consequence.

ledge. A French man-of-war of the line and a frigate were to have sailed in two or three days, from Brest to Louisburg, with troops and all kinds of military stores. The large ship took fire and burnt to the water's edge, and there was no other ship to supply her place, except the *Vigilant*, then upon the stocks. She was fitted with all possible expedition, but delayed until the English men-of-war arrived; otherwise it is probable the attempt would have miscarried.—*JUAN'S Voyage to the South Sea*, vol. iii. p. 385.

On

On the 15th of September, an express arrived from 1755 general Johnson with intelligence which relieved the people of Massachusetts Bay from their fears.

The English army, which had marched near to lake George, formed a camp, which they fortified with the best breast-work the time would admit of, such as trees felled for that purpose,

Advice was soon received of an army of French and Indians, upon their march from South Bay. Colonel Ephraim Williams, a Massachusetts officer, was ordered to march out with one thousand English and two hundred Indians, and to endeavour to ambush the enemy; but he was met by them sooner than he expected, and fell in the beginning of the action*. The men fled back to the camp with great precipitation. Many of them were killed or badly wounded, and those who escaped came to the camp in tumultuous hurry, and struck terror into the whole army. The enemy, which consisted of regular troops, militia, and Indians mixed, came on in good order. The English within the camp lay flat upon the ground, until they had received the first fire, which was made at a great distance, and with muskets only, the enemy having no artillery. The cannon from the English camp did no great execution.

The baron Dieskau, general of the French army, soon received a wound, whether from the English, or from his own army, is uncertain. It was a fortunate stroke for the English, as it disabled him for any further service, cooled the ardour of the French, raised the spirits of the English, and caused both French and Indians to retreat, leaving their general a prisoner. In the action, and in their retreat, it was reported that the enemy lost one thousand men; but

* Major Ashley, Captains Ingersoll, Pewtar, Ferrall, Stoddard, M'Ginnis, and Stevens, were slain also in this action.

1755 this was much too large a computation. Of the English, about one hundred and thirty were killed and mortally wounded; among whom was colonel Titcomb* of the Massachusetts, who behaved with great bravery in the expedition against Louisburg. Hendrick also, a Mohawk chief, was slain. He had been influenced by general Johnson to join the English army, at the head of two or three hundred Indians of different tribes.

Johnson, it was allowed by all, discovered a firm, steady mind, during the action. He received a shot in one of his thighs, which he complained of as very painful, but not dangerous.

The enemy was so much dispirited by the loss of their general, and the garrison left at Crown Point was so weak, that it is probable it would have been an easy acquisition, if an immediate attack had been made; but the general did not think it advisable.

This repulse of the enemy caused great rejoicings in the several colonies, and it was represented in the most favourable light in England.

The Massachusetts assembly, though they could find no fault with the conduct of the general in the field, or as it related to the common interest with which he was intrusted, yet they were not pleased with his distinguishing New York in his correspondence; and, in a message to the lieutenant-governor, they desired he would acquaint general Johnson, that, as the Massachusetts province bore the greatest part of the charge and burden of the expedition, it ought to be considered as principal in all respects; and that all papers and advices of importance ought to be first sent to that province; and that the French general, and other prisoners of note, ought to be sent to Boston. General Johnson's corre-

* He was the only officer killed, and the general and major Nichols were all that were wounded in the camp.

spendence

spondence was, notwithstanding, principally with the 1755 government of New York. Dieskau and the other prisoners were sent there; and it was most convenient for the wounded that they should be sent there also, it being nearest to the army, and the passage to it being by water.

Thus arose a coldness between the province and the general, which seemed to give him no great concern. All he could expect from the colonies bore no proportion to his expectations from government in England, which were fully answered. The king conferred on him the dignity of a baronet. The parliament made him a grant of 5000*l.*, or rather compelled the colonies to the payment of 5000*l.*, by deducting so much from the sum intended as a reimbursement to the colonies, and appropriating it to general Johnson's benefit.

Massachusetts assembly, by repeated votes, declared their sense of the expediency of proceeding upon the expedition without delay; and that, at least, an attempt ought to be made to remove the enemy from Ticonderoga, where they had taken post; and commissioners were sent to Albany, and authorized to make all necessary provisions for that purpose. But it grew late in the year, and the army was disbanded without effecting any thing more than the repelling of an enemy, who, if this expedition had not been formed, would not have come out against the English, or not in this quarter.

The other part of the plan of measures for the present year fell short of what was intended.

After the consultation at Alexandria, governor Shirley returned to Boston*, and having attended an assembly for the election of councillors†, and other ordinary business, he left Boston‡ and proceeded westward in order to prepare for the expedition

* May 13, 1755, † May 28, ‡ June 28.

against

1755 against Niagara. Upon general Braddock's death, the command of the forces devolved upon him. This did not hinder his proceeding to lake Ontario, where he spent the remainder of the summer and the autumn in building forts at Oswego ; reserving the attempt upon Niagara for the next season. While he was at Albany, returning to Boston, he received a commission appointing him commander-in-chief of all his majesty's forces upon the continent of North America. At this moment, he was in his zenith. His friends saw the risk he was running, and wished he had contented himself with his civil station. The affairs of North America called for a general of the first military accomplishments. By his letters from Albany, he recommended to the assembly the appointment of commissioners to confer with commissioners from the other colonies upon measures for the further prosecution of the war. But being chagrined at so little effect from the expense of the last year, they received those recommendations very coldly, and declined a compliance, alleging, that "securing his majesty's territories is a design which his majesty only is equal to project and execute, *and the nation to support* ; and that it cannot reasonably be expected that these infant plantations should engage as principals in the affair."

He went from Albany to New York, where he spent several weeks in consultations with the officers of the army upon the necessary preparations for the measures of the next year ; and did not return to his own government until the middle of winter*.

The French forts at Beau Sejour, Bay Verte, and the river St. John, in Nova Scotia, had been recovered. The state of that province was, notwithstanding, deemed very insecure ; many thousand French inhabitants still continuing in it. They had been ad-

* He arrived in Boston January 30th, 1756.

mitted

mitted by lieutenant-governor Armstrong, after that 1755 province was reduced in the reign of queen Anne, to such a sort of oath, as to consider themselves rather in a neutral state between England and France, than in subjection to either, and from thence they took the name of French neutrals. Being all Roman catholicks and great bigots, and retaining the French language, they were better affected to France than to England. In civil matters, they had been more indulged by the English than they would have been by the French, being in a manner free from taxes; and a great part of them were so sensible of it, that they wished to avoid taking part on one side or the other. But the Indians, who were engaged on the part of the French, had constant intercourse with them, their houses being scattered, and where there were any number together to form a village, open to both French and Indians from Canada, without any sort of defence. And it was the general opinion, that, if an attempt should be made by the French to recover the province of Nova Scotia, the whole body of the Acadians, some from inclination, others from compulsion, would join in the attempt.

The commander-in-chief of his majesty's ships, then at Halifax*, as well as the governor of the province, supposed that the principle of self-preservation would justify the removal of these Acadians; and it was determined to take them by surprise, and transport them all, men, women, and children, to the English colonies. A few days before the determination was executed, notice was given to the governors of the several colonies to prepare for their reception. Far the greatest part were accordingly seized by the king's troops, which had remained in the province, and hurried on board small vessels pre-

* Admiral Boscawen.

pared

1755 pared to receive them, with such part of their household goods as there was room for; the remainder, with their stock of cattle, the contents of their barns, their farm utensils, and all other moveables, being left behind, and never recovered, nor any satisfaction made for them.

In several instances, the husbands who happened to be at a distance from home, were put on board vessels bound to one of the English colonies, and their wives and children on board other vessels, bound to other colonies remote from the first*. One of the most sensible of them, describing his case, said, "it was the hardest which had happened since our Saviour was upon earth."

About a thousand of them arrived in Boston, just in the beginning of winter, crowded almost to death. No provision was made, in case government should refuse to take them under its care. As it happened, the assembly were sitting when they arrived; but several days were spent without any determination, and some aged and infirm persons, in danger of perishing, were received on shore in houses provided for them by private persons. At length, the assembly passed a resolve, that they should all be permitted to land, and that they should be sent to such towns as a committee appointed for that purpose should think fit; and a law of the province was passed, to authorize justices of the peace, overseers of the poor, &c., to employ them in labour, bind them out to service, and, in general, provide for their support, in like manner as if they had been indigent inhabitants of the province.

* Five or six families were brought to Boston, the wife and children only, without the husbands and fathers, who, by advertisements in the newspapers, came from Philadelphia to Boston, being, till then, utterly uncertain what had become of their families.

Favour was shewn to many elderly people among 1755 them, and to others who had been in circumstances superior to the rest, and they were allowed support without being held to labour. Many of them went through great hardships, but in general they were treated with humanity. They fared the better, because the towns where they were sent, were to be reimbursed out of the province treasury, and the assembly was made to believe that the province would be reimbursed by the crown; but this expectation failed. It was proposed to them to settle upon some of the unappropriated lands of the province, and to become British subjects, but they refused. They had a strong persuasion, that the French king would never make peace with England, unless they were restored to their estates. A gentleman* who was much affected with their sufferings, prepared a representation proper for them to make to the British government, to be signed by the chief of them in behalf of the rest, praying that they might either have leave to return to their estates, or might receive a compensation; and he offered to put it into the hands of a proper person in England to solicit their cause. They received the proposal thankfully, took the representation to consider of, and, after some days, returned it without having signed it. They were afraid of losing the favour of France, if they should receive or solicit for compensation from England. Despair of the free exercise of their religion was another bar to every proposal tending to an establishment.

The people of New England had more just notions of toleration than their ancestors, and no exception was taken to their prayers in their families, in their own way, which, I believe, they practised in general, and sometimes they assembled several families to-

* The author,

gether ;

1755 gether; but the people would upon no terms have consented to the publick exercise of religious worship by Roman catholick priests. A law remained unrepealed, though it is to be hoped it would never have been executed, which made it a capital offence in such persons to come within the province. It was suspected that some such were among them in disguise; but it is not probable that any ventured. One of the most noted families, when they were dissuaded from removing to Quebec, lest they should suffer more hardship from the French there, than they had done from the English, acknowledged they expected it; but they had it not in their power since they left their country, to confess and to be absolved of their sins, and the hazard of dying in such a state distressed them more than the fear of temporal sufferings*.

The whole surviving force, employed by the colonies upon the expedition under general Johnson, returned before winter, except six hundred men, which remained to keep post at lake George, where a wooden fort was built, and at another station

* When these unhappy persons despaired of being restored to their own estates, they began to think of a removal to places where they might find priests of their own religion, and other inhabitants of their own language. Many hundreds went from the New England colonies to Hispaniola, where, in less than a year, by far the greatest part died. Others went to Canada, where they were considered as an inferior race of Frenchmen, and they were so neglected, that some of them wrote to a gentleman in Boston who had patronised them, that they wished to return. In 1763, Monsieur Bougainville carried several families of them, who had found their way to France, to the Malouines, or Falkland Islands, where they remained but a short time, being turned off by Mr. Byron. Bougainville says, "they are a laborious intelligent set of men, who ought to be dear to France, on account of the inviolate attachment they have shewn as honest but unfortunate citizens." Thus they were dispersed through the world, until they were in a manner extinct, the few which remained being mixed with other subjects in different parts of the French dominions.

near

near Hudson's river, which took the name of Fort 1755 Edward.

These, with some small vessels and a large number of boats on the lake, and works erected by Mr. Shirley at Oswego, where he had placed garrisons, and lodged large magazines of provisions and military stores, were all the strength of the English upon the western frontiers, at the close of the year 1755. The French had a strong fort at Crown Point, and works at Ticonderoga, another fort at Cataraqui, upon or near lake Ontario, called Fort Frontenac, and another near the falls of Niagara.

During Mr. Shirley's absence from his government, he had held a conference with several Sachems of the six nations, and had promised to build forts in the countries of the Onandagoes, Oneidas, and Tuscaroras, and to provide garrisons for and to send men to the Cayugas, to protect and assist them in their husbandry, and he had received assurances from the other two nations, the Senekas and Maquas, that they would join him in the spring*.

It

* The year 1755 was rendered remarkable by an earthquake more violent than any other since the discovery of America. It seems to have been greater in Massachusetts than any other colony. In Boston, many chimneys and walls of houses were much shattered, but no house thrown down. A stack of chimneys, in one large house, was lifted off from the wall of the house, and brought so far upon the roof, that if it had been an inch or two more, that part of the stack which was above the roof must have fallen over, and made a passage through the house to the cellar. At Newport, on Rhode Island, it was less sensibly felt than on the main land near to the island: no lives were lost. This was the third remarkable earthquake in New England, since the English arrived there.

Of the first, in 1688, we have but an imperfect account. The inhabitants were few in number. At the time of the second, in 1727, there was no remembrance nor tradition of the effect of the first upon the minds of the people. That, in 1727, was accompanied with a most tremendous noise, which greatly increased the terror, from the danger of the shock, which was not greater than
this

1756 It was part of his plan for the year 1756, to remove the French from the lakes; and, as soon as he returned to Boston, he called on his assembly to afford their assistance.

They were not in a temper suddenly to hearken to this call. Many of them were not satisfied, that a better use might not have been made of the repulse of the French the last year, than remaining altogether on the defensive. Accounts had been received that general Johnson was expected at Ticonderoga and Crown Point immediately after Dieskau's defeat, and that, if he had proceeded, both places would have fallen into his hands without defence.

At first, they desired to be wholly excused. Any further charge must ruin them. The treasure and power of France were likely to be employed against the English colonies. They hoped his majesty would graciously afford a sufficient force to oppose so powerful an enemy.

The governor, in his reply, said to them, that their furnishing a quota of men for the service of the next year would probably free them from future taxes, as it would remove that enemy which otherwise would make them to be necessary; and the most likely way to obtain a compensation for what they had already done would be by a further vigo-

this of 1755. Besides, the first great shock was followed by others less violent, the same night; and such smaller shocks were frequently felt for several weeks after. The places of public worship were then crowded, one day after another, in most parts of the country; and a strong and permanent religious impression was made upon the minds of many people. This, in 1755, had less of that kind of effect. Public fasts were ordered by authority, but the terror was soon over, there being very few repetitions of the shock. A great part of the people remembered the earthquake in 1727, and there had been other less violent ones in a few years, which made them more familiar, and lessened the apprehension of danger in proportion.

rous

rous exertion*. They assigned a further reason for 1756 their non-compliance. They had not been able to borrow money sufficient to pay the charges of the last year, and it was absolutely out of their power to provide for the charge of the next.

This objection he obviated too, by an offer to lend the province thirty thousand pounds sterling, out of the monies which had been remitted for the king's troops, and to repay himself out of the grant which it was expected parliament would make to the province for last year's charges; but with this caution, that an act of assembly should pass for levying a tax in the years 1757 and 1758, of thirty thousand pounds sterling, as a collateral security, the act to have no effect if the grant should be before made by parliament.

Declarations made to serve political purposes oftentimes will not bear a strict scrutiny.

The province was never in better credit than at this time. They could have borrowed enough to pay the charges of the past and present year; but this mode of proceeding induced many members of the assembly to come into the measure. They were made to believe it tended to facilitate the obtaining of a grant from parliament.

In this way the assembly was brought to agree to the governor's proposal, and to resolve to make provision "for raising three thousand men, in order to remove the encroachments of the French from his majesty's territories at or near Crown Point; in humble confidence, that his majesty will be gra-

* In 1746, when the assembly desired to be excused from engaging in an expedition against Canada, being so involved by that against Louisburg that any further charge must ruin them, the governor replied, that they were ruined already, unless they should be reimbursed, and the only way to obtain a reimbursement was by involving themselves deeper, and, by their zeal, recommending themselves to favour.

ciously

1756 ciously pleased, hereafter, to give orders for defraying the expense of this expedition, and for establishing such garrisons as may be needed, in order to maintain the possession of that country." They intimated to the governor, that it would encourage men to enlist, if a gentleman belonging to the province might have the chief command; and this intimation was not disagreeable to him, as he could with better grace decline making the offer to Sir William Johnson.

Mr. Shirley had formed a plan to raise three thousand men in Massachusetts Bay, as the proportion of that province to an army of nine thousand, to be completed by Connecticut, New Hampshire, Rhode Island, and New York. An addition to this number was expected from the governments southward of New York. Mr. John Winslow, who was second in command the last year at Nova Scotia, was appointed commander-in-chief in this service.

It was expected that a proper bounty would soon encourage the whole number to enlist; but the enlistment went on slowly, and an act of assembly passed to make up the deficiency by impressing men out of the militia: but this act was not seasonably executed; for the governor, who left the province the latter part of April, complains, in a letter of the 25th of May, that there was likely to be a deficiency of five hundred men; and Winslow urged, not only to make up that number, but to raise an additional force. When the army arrived at Fort Edward, either Ticonderoga and Crown Point had been really made stronger than was expected, or appeared more formidable from some other cause; and men of judgment were under great concern, lest an unsuccessful attempt should be made by a body of raw, undisciplined militia, and they should be repelled, scattered, and cut to pièces.

On

On the other hand, it was painful to think of 1756 losing another year, by the continuance of the army in a state of inactivity.

Mr. Shirley had remained at Albany and New York, directing the necessary measures for the king's service upon lake Ontario, completing the armed vessels, whaleboats, batteaus, provisions, and war-like stores, necessary for strengthening Oswego, and carrying on an expedition against the French forts at Cataraqui and Niagara.

While at New York in the month of June, he received despatches from the secretary of state, signifying that it was his majesty's pleasure that he should come to England, in order to his being consulted upon measures for carrying on the war; that Lord Loudoun would soon leave England, in order to take the command of his majesty's forces, which, in the mean time, Mr. Shirley was to leave to general Abercrombie. Though this had the appearance of letting him down tenderly, it was a mortifying stroke, and the more so, as it was altogether unexpected. It seems to have proceeded from a more mature consideration of his want of military knowledge, and his unfitness for so great a command. He was never charged with want of fidelity; and the state of his own affairs, after he had quitted the service, shewed that he had paid more attention to the publick, than to his private fortune. He was obliged to continue at New York many weeks to settle his accounts, which gave him much greater trouble, as the whole affairs of the army had been carried on by agents employed to purchase provisions, stores, &c., on the best terms they could, and not by contractors at certain rates. Here he had the further mortification of receiving news of the loss of Oswego, taken by Montcalm, the 14th of August, with all the shipping, stores, &c., of every kind, and of immense value. The garrison were made prisoners

1756 ers of war. Colonel Mercer, chief in command, was killed by a cannon ball.

Mr. Shirley was charged with not giving a full information of the condition of the place to his successor in command. He denied the truth of the charge, and attributed the loss of the place to the want of skill, or courage, or both, in those with whom the defence of it was intrusted. Neglect from many, who had been servile courtiers a short time before, convinced him of the truth of the old observation, "that you are to number your friends so long as you continue in prosperity, and no longer."

He wished to spend a little time with his family in Boston ; but his successor, judging that he should be better able to transact business with the assembly after the governor had left the province, called on him repeatedly, by letters, to embark, and he sailed several weeks sooner than otherwise he would have done*. When Oswego surrendered to the French, a body of English troops were on their way from Albany in order to strengthen the garrison. The French force was represented to be very formidable,

* Mr. Shirley made no doubt of his return to his government, if he could not obtain a better. Soon after his departure, private letters from England mentioned the high displeasure of the duke of Cumberland at his conduct, and some mark of it was feared by his friends. Before he arrived, a successor to his government was nominated. Considering how much of his life had been spent in publick service, how small his emoluments had been, and especially considering the acquisition of Louisburg, and the preservation of Nova Scotia, in the former war, he seems to have met with hard measure. He suffered, besides, by the delay in passing his accounts ; and some persons employed under him in the service were great losers, by not having observed the forms required in the army ; though, as he alleged, the whole expense of victualling the army, by his accounts, did not exceed four-pence per day for each man ; and the government contract, under his successor, was at sixpence per day ; the same articles of charge being contained in the first as in the last. There was no inquiry into his conduct. After long solicitations, he obtained the small government of the Bahama islands.

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and, it was expected, would come down to Albany; 1756 but while general Webb was employing the English troops in felling trees to fill up or stop the passage through Wood Creek, general Montcalm took the other route, and went back by the river St. Lawrence, in order to preserve Crown Point and Ticonderoga from the army under Winslow. This army consisted of seven or eight thousand men. If it was advisable for them to have proceeded at any time this season, it was when the army under Montcalm had marched against Oswego.

Just at this time the general command of the forces was changed, and all affairs seemed to be at a stand.

After lord Loudoun had received information of the state of the army, and of the force, and success, of the enemy, it is probable that he laid aside all thoughts of acting upon the offensive for that campaign; though he did not make his resolutions publick until October. In the mean time he received intelligence, that the enemy, flushed with success, had arrived at Ticonderoga. He therefore ordered such of the regular forces as could be spared, to join Winslow's army, which it was supposed would be attacked by Montcalm; and it is probable that the intelligence which was carried by scouting parties to Montcalm of this junction, diverted him from his design. As soon as the main body of the enemy went back to Canada, the provincial army broke up, and returned to the government in which it had been raised. Many had deserted, and more had died, while they lay encamped. Many died upon the road, and many died of the camp distemper after they were at home.

The measures of this year were in every part unsuccessful. When the Massachusetts forces returned, no provision had been made by government

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for

1756 for their pay. Three commissioners* were appointed to apply to lord Loudoun at Albany, to enable the government to discharge this debt, but without success, and provision was made by the assembly as usual. Lord Loudoun consulted with the commissioners at Albany, upon the expediency of his meeting the governors, with commissioners from the assemblies of the New England colonies, at Boston, in order to facilitate the measures of the next year; and intimated his intention to propose such a meeting. Whatever engagements were jointly made, he supposed might be depended on.

In former years, when each assembly was left to send what they thought fit, the number had always been short of expectation †.

1757 Lord Loudoun came soon after to Boston, where, besides Mr. Phipps, lieutenant-governor of Massachusetts, he found Mr. Fitch and Mr. Hopkins, the governors of Connecticut and Rhode Island, and commissioners from each of the assemblies, and also from the assembly of New Hampshire ‡.

The number of men proposed to be raised by the
four

* Sir William Pepperell, Samuel Welles, and Thomas Hutchinson.

† Josiah Willard, esq., secretary of the Massachusetts, died December 1st, 1756, having continued in that office from the year 1717. He was not an officer merely without reproach, but had always distinguished himself by his diligence, integrity, and fidelity to his trust, and by a courteous, obliging behaviour to all whose business called them to his office. He depended on the people for his support, which was very moderate; but his dependence, as secretary, had no influence on his votes, as councillor, in which capacity, though he was subject to an annual election, and often voted contrary to the mind of the majority of the house, he was so upright, that even the malice of party seldom struck at him. Sometimes he did not wholly escape attempts, made without success, to remove him. He was commonly mentioned with the epithet of "the good secretary." The lieutenant-governor appointed Andrew Oliver, esq., his successor, until the king's pleasure should be known.

‡ The commissioners from Massachusetts were Thomas Hutchin-

four governments was four thousand only. This 1757 being less than expected, met with no opposition; but it was as difficult to settle the proportion of each government, as if the number had been much larger. After ten days spent by the commissioners without agreeing, lord Loudoun proposed to them a proportion, in which they acquiesced, and promised to recommend a compliance to the respective assemblies*.

Lord Loudoun offered to victual the men, and to furnish ammunition and artillery stores, and to admit into the king's hospital those whose cases required it. He would not say where they would be employed, lest the enemy should come to the knowledge of it; but, as he knew where the assemblies desired they should not be employed, he declared he had no intention to carry them there; and, as it had been the practice to raise men for one year only, he did not expect to detain them so long as that.

These proposals were very agreeable to the commissioners. The assembly of Massachusetts Bay, which was then sitting, discovered a dislike to the demands which had been made by lord Loudoun, for barrack articles and quarters for the king's troops, when they occasionally came into the province; but it proceeded to no length, and the demands were complied with.

Mr. Phipps, the lieutenant-governor, rejoiced in the success of this convention. His declining age and health would not admit of his giving close attention to it; but lord Loudoun facilitated his measure by

son, and William Brattle, of the council; Samuel Welles, Thomas Hubbard, and James Otis, of the representatives.

* Massachusetts, one thousand eight hundred; Connecticut, one thousand four hundred; Rhode Island, four hundred and fifty; New Hampshire, three hundred and fifty. Respect was had to the force employed by Massachusetts, both by sea and land, exclusive of this force.

1757 application to the commissioners, as a board, and to such of them personally, as had the greatest influence at the board, or in the assemblies. Much respect was shewn to his lordship, and there had been, at no time, a fairer prospect of a good harmony between the officers of the crown and the assemblies and people of the colonies, than there was at this time.

Although the plan of operations for the next year was not made publick, enough appeared, to make it probable that the principal object was the reduction of Louisburg, by a competent naval force, and the regular troops; and that the provincials, joined to such a number of regulars as should be judged proper, were to remain on the defensive, as guards and garrisons for the protection of the frontiers*.

In all former wars between England and France, the Indians, upon the eastern frontiers, had taken part with the French. The poor creatures had lately been visited with the small pox, which is remarkably fatal to them, and they were reduced to so small a number that the French neglected them; and fearing they should irrecoverably lose the territory which remained to them, they desired to continue in peace, and made proposals for renewing the treaty. The lieutenant-governor, willing to take the advantage of this pacific disposition, had determined to meet the assembly the last of March, but, a few days before the time of meeting he fell sick, and died the 4th of April.

It fell to the council to act in a twofold capacity, as governor, and as the second branch of the legislature.

* It was proposed by lord Loudoun, that the one thousand eight hundred men, raised by Massachusetts, should be under one field officer only. Thus the provincials came under the command of the colonels in the regular service. Winslow, having rank of major-general, could not serve, and Joseph Frye, esq., was appointed to the command.

Not

Not judging it convenient to proceed on a treaty with the Indians, until a governor should arrive in the province, and little other business being necessary, after several votes for completing the levies, and an act for laying an embargo on all vessels in the several harbours within the province, the assembly was dissolved. The design of this act was to prevent the discovery of the expedition against Louisburg. A flag of truce from thence was detained at Boston, and the people belonging to her put under confinement.

Before the session, in May 1757, for the election of councillors, letters came to hand from Mr. Bollan, the province agent in England, informing the council that the king had been pleased to appoint Thomas Pownall, esq., to be governor of the province in the room of Mr. Shirley; and that the newly appointed governor was to embark for his government by way of Halifax, the next day after the date of the letters. The council, therefore, in a speech to the house, recommended to act only upon business of great necessity, and to defer all other matters until the governor's arrival. This was a compliment to the new governor, but did not prevent either house from going on with whatever business came before them as usual.

Among other matters, a bill was brought in and passed both houses, for making the district of Danvers a town, by which a right would be acquired of sending two members to the general assembly. By the king's instructions to the governor, he was strictly charged to consent to no act for making a new town, unless, by a clause in it, there should be a restraint of this power of sending representatives; and Danvers, a few years before, when it had been separated from the town of Salem, was made a district and not a town, because districts had not this power. Every governor and lieutenant-governor had observed this instruction; and it was thought by some of the council

1757 cil an ill-judged measure, to concur with the house in passing this bill, as it carried the appearance of influence by the house, on whom they depended for their election. The house had always disliked the instruction, as it prevented the increase of the number of members, which added to the importance of the house. The council should have approved of it, because, as the importance of the house increased, that of the council lessened in proportion ; especially in all elections which were made by the joint votes of council and house. In earlier times of the constitution, when the powers of the governor had devolved upon the council, they had been very scrupulous in maintaining the prerogative in every part, and considered themselves under as strong obligations to adhere to the observance of the royal instruction, as the governor or lieutenant-governor. There had not been any instance of a protest in form, in imitation of the practice in the house of lords. Upon this occasion, one of the council desired his dissent might be entered, and it stands upon record*. A bill, receiving

* The question, whether the bill entitled an act for erecting the district of Danvers into a township shall be enacted, having passed in the affirmative, I dissent for the following reasons : —

First. Because it is the professed design of the bill to give the inhabitants, who now join with the town of Salem in the choice of representatives, a power of choosing by themselves ; and the number of which the house of representatives may at present consist, being full large, the increase must have a tendency to retard the proceedings of the general court, and to increase the burden which, by their long session every year, lies upon the people, and must likewise give the house an undue proportion to the board of the legislature, where many affairs are determined by a joint ballot of the two houses.

Second. Because, there being no governor nor lieutenant-governor in the province, it is most agreeable to his majesty's commission to the late governor, to the message of this board to the house, at opening the session, and, in itself, is most reasonable, that all matters of importance should be deferred until there be a governor or lieutenant-governor in the chair.

Third.

ing the assent of the governor contrary to the in- 1757
structions given by the king, it is natural to suppose,
would have been disallowed by the king; but the
council kept no correspondence by letters with the
king's ministers, and this bill, with others, received
the royal allowance, probably without being observed
to be contrary to the instructions; which would not
have been the case, if there had been a governor or
lieutenant-governor, it having been their constant
practice to make their observations upon every act,
when sent to England to be laid before the king.

The military operations for the year 1757 were
carried on upon the plan which had been con-
jectured. The men raised in Massachusetts Bay and the
other colonies of New England, were posted at Fort
William Henry, Fort Edward, and other places on the
frontiers, under the command of an officer of the
regular forces.

Lord Loudoun with the main body of the regular
troops, under the convoy of one fifty-gun ship, one
twenty, and two sloops, the whole fleet consisting of
ninety sail, and the troops being in number about
six thousand, left New York the twentieth of June,
to proceed to Halifax. The fleet had lain ready for
some time, expecting intelligence of the arrival of
men of war and transports from England, destined
also to Halifax; but, it growing late, at length sailed
without advice. Soon after the news of the sailing
of this fleet, intelligence was brought to Boston,

Third. Because the board, by passing this bill, as the second branch
of the legislature, necessarily bring it before themselves, as the first
branch, for assent or refusal; and such members as vote for the bill
in one capacity, must give their assent to it in the other, directly
against the royal instruction to the governor, when the case is in no
degree necessary for the public interest; otherwise their doings will
be inconsistent and absurd.

Council Chamber,
June 9, 1757.

THOMAS HUTCHINSON.

of

1757 of six French ships of the line and one frigate, seen off Cape Sable; which filled with anxiety every man who had the publick interest at heart, until advice was received of the arrival of the English fleet at Halifax, ten days after it left New York.

Admiral Holburne, with the fleet and transports from England, joined those from New York, at Halifax, the 9th of July.

In this fleet came Mr. Pownall, the newly appointed governor for Massachusetts Bay; and from Halifax he proceeded to Boston, where he arrived the second of August. This was his third passage to America. In 1754, when Sir Danvers Osborne came over to the government of New York, Mr. Pownall was in his family, and brought with him, or received soon after, a commission as lieutenant-governor of New Jersey, the governor whereof, Mr. Belcher, was old and infirm; and in case of his death, Mr. Pownall would probably have been his successor. With a view to make himself acquainted with the affairs of the colonies, he was present at Albany while the commissioners held their meeting there, and, soon after, made a visit to Massachusetts Bay; and Mr. Shirley appointed him, in conjunction with a gentleman of the council and another of the house, to solicit the aid of the colonies of Pennsylvania and New York, in carrying on the war. He also accompanied to Alexandria the governors, &c., who met general Braddock at that place. In 1755, he went back to England, and returned to America with lord Loudoun in 1756, but continued there a few months only. Upon his arrival again in England, he was appointed to succeed Mr. Shirley. He had acquired great knowledge of the geography, history, and polity of the several American colonies, and came into office with many advantages.

Great part of the people of the province who had been attached to Mr. Shirley, were, in principle, friends to

to government, and disposed to support his successor 1757 in pursuing the ends of government. Many who had been inimical to him, and who kept up a strong party against him, though always the minority, had not the esteem of the people, any further than they acquired it by their opposition to government, and professions of maintaining liberty. These were the men who were most forward in offering incense to the new governor; and these he took most pains to secure to his interest*, depending upon the principles of those who were in favour of government, without immediate respect to the person of the governor, to promote his measures for the public good. But besides these, there were many who were attached to Mr. Shirley, merely because he kept them in places, and, upon their recommendation, disposed of places to their friends, and also hearkened much to their opinion and advice, in many affairs which came before the general assembly. Between these persons, and many of those who had been in opposition to Mr. Shirley, there was great personal enmity; and it soon appeared impracticable to unite them in public measures. In a short time most of the chief friends to Mr. Shirley became opposers of Mr. Pownall, and most of Mr. Shirley's enemies became Mr. Pownall's friends. A part, however, of those who had been in favour of government from principle, continued to support the measures of government. In the latter part of his administration, they who had acquired the favour of the people by opposing Mr. Shirley, lost it by supporting Mr. Pownall, and were no longer able to do him any more service. They failed of their elections into the assembly, where only they could

* He appointed many of them to places of honour and trust, and made them his confidants. Some persons who wished success to his administration, advised against the measure, and foretold the consequences, but he refused to hearken to them.

1757 be of use, and when he left the province, he observed himself, that he had very few friends remaining in the house.

The governor scarcely had time to inquire into the state of publick affairs, before an express arrived from major-general Webb at Fort Edward*, informing him that a large army of French and Indians were in motion, in order to attack the forts under his command, and urging, that all possible assistance should immediately be afforded. The inhabitants of the province, by charter, cannot be carried beyond the limits of it except by their own consent, or by virtue of an act of the general assembly.

The governor with the council had, in many instances, since the charter for the publick safety, done those acts, which, strictly and constitutionally, the general assembly only had power to do.

Upon this occasion the governor caused the council to be convened, and required their opinion, whether, in case of an attack made by the enemy upon his majesty's forts without the limits of the province, it would be a breach of duty in him to order the militia to march beyond those limits, the restriction in the charter notwithstanding.

The council considered the marching of the militia beyond the bounds of the province to join the other forces there, as tending more to the defence of the province than if the militia should wait within its limits, to meet the enemy there; and though an order for that purpose was not within the words, yet it was within the reason, of the charter; and, therefore, they gave their opinion, that he should require the militia to march.

In two or three days more, accounts arrived of the progress of the enemy, to the 4th of August, when they laid siege to Fort William Henry. The

* The letters dated July 31.

first step taken by the governor was the creation of 1757 a new officer not known in the province before ; and Sir William Pepperell received a commission as lieutenant-general over all the militia throughout the province.

Orders were then issued by the governor, to the colonels of the several regiments through the province, to cause every man to be completely furnished with arms and ammunition according to law ; to hold himself in readiness to march at a minute's warning ; and to observe the orders of Sir William Pepperell.

Sir William repaired to the town of Springfield, to collect there a magazine of provisions and military stores, and to issue his orders from thence.

Soon after his arrival there, he received intelligence of the surrender of Fort William Henry on the 9th of August, and immediately communicated the same by express to the governor at Boston ; earnestly urging that all the aid possible should be afforded.

The governor, by advice of council, issued orders, that the several troops of horse, and one-fourth part of all the regiments of foot, the counties of York, Nantucket, and Duke's county excepted, should be drawn out immediately for the protection of the province, and for the aid and assistance of his majesty's forces. A train of artillery was also ordered to be provided, and a regiment of artillery to be formed. The governor proposed to march himself, and to take the command of the force of the province ; and his company of cadets had orders to be ready to attend him. Sir William Pepperell was ordered to require the inhabitants west of Connecticut river, to destroy their wheel carriages, and to drive in their cattle. In case of the approach of the enemy, it was proposed to make a stand on the east side of the river.

Several

1757 Several regiments, from the counties of Hampshire and Worcester, marched towards Fort Edward, into the unsettled country beyond Albany; but, before they reached the fort, they were stopped by orders from general Webb, who was convinced that the enemy was satisfied with the acquisition of Fort William Henry, and did not design to attack Fort Edward; and before the 18th of August, the governor received such intelligence as caused him to revoke his orders for raising the militia.

All that were upon the march, as soon as they came to the knowledge of general Webb's orders, returned home.

It is almost incredible, that four or five thousand men, most of them Canadians and savages, should give such an alarm to so great a province.

Reports were spread among the people, that, after the surrender of the fort, the garrison had been massacred by the Indians, by the countenance and connivance of the French general; and it is certain, that, when a detachment from the French army was escorting the prisoners on their way to Fort Edward, the Indians, who had been disappointed in their expectations of plunder, fell upon the English, and stripped many of them. The two colonels, Munro and Young, with a great part of the prisoners, either had not left, or went back to the French army, and complained of this breach of the capitulation. About six hundred fled into the woods, some quite, and others almost, naked; and the first who came into Fort Edward reported the massacre of the rest. Some few were killed, or never heard of; the rest came in, one after another, many having lost their way in the woods, and suffered extreme hardships. The commander of the Massachusetts forces, colonel Frye, was thought to be lost; but, after wandering about some days, came in with no other apparel than his shirt. The prisoners acknowledged
that

that the French strove to restrain the Indians, but 1757 were overpowered.

When the accounts of the charge attending this alarm were exhibited to the general assembly, it was then said by many to be more than necessary. The charge, however, was allowed. The men were paid at the same rate as the soldiers who had enlisted into the service, and were then on the frontiers. The members of the assembly have always taken care that justice should be done to the soldiers in publick service, whether they have been impressed without any promise of pay, or enlisted upon encouragement, or assurances given.

Upon the news of the loss of Fort William Henry, an express was sent to lord Loudoun, at Halifax, to inform him of it, and of the probability that Fort Edward would meet with the same fate, and that the enemy would make advances towards New England and New York.

The express met his lordship, with the forces under his command, on his passage from Halifax to New York. He wrote to governor Pownall, that he proposed, as soon as he should come to land, to march directly to meet the enemy, and hoped to give a good account of them. He recommended to the governor, in the mean time, to harass and distress them, but not to hazard an engagement.

While the English fleet and army were at Halifax, preparing for a descent upon the island of Cape Breton, endeavours were used to obtain the fullest knowledge of the enemy's force there; but the accounts varied, and were uncertain. The English troops were embarked, in order to proceed on the 1st of August. On the 4th of August, a French prize was brought into Halifax, having left Louisburg a few days before. It appeared, by the examination of the prisoners, that there were seven-
teen

1757 teen ships of the line and twelve frigates then at Louisburg, with four thousand regular troops, beside the garrison *. The summer was far advanced. The troops, without great loss, might make good their landing at Chapeau-rouge Bay; but there was no probability of carrying the town against so strong a land force, and a sea force superior to that of the English. A defeat would have exposed the English colonies to the ravages of the enemy, and would have been of fatal consequence to the British interest in America. It was therefore determined, in a council of war of the sea and land officers, by all but one voice, not to proceed.

The English fleet, however, remained waiting the motions of the French fleet, until the 25th of September; when, cruizing off Louisburg, a violent storm arose, in which the Tilbury, a sixty-gun ship, was driven upon the rocks and lost; ten or twelve other ships were dismasted, and others damaged, and the whole fleet scattered, most of which returned to England.

The French fleet had an opportunity, the whole month of October, of laying waste the sea-ports of New England; and the people of Boston were not free from fears, until news arrived of its having sailed for Europe.

The return of lord Loudoun, with his troops, freed the colonies from apprehensions of danger from any new inroads of French or Indian enemies; but winter was approaching, which caused all thoughts of offensive measures to be laid aside. Thus ended the third unsuccessful campaign in America.

When the governor arrived, the general assembly stood prorogued to the 16th of August.

* The English who were then prisoners at Louisburg, after they were released, confirmed the truth of this account.

Nothing

Nothing memorable happened in this short session, except a proposal from the governor to the assembly, to pass an act "to empower and require the civil magistrate to take up and assign quarters for such of the king's troops as should come into the province, under such regulations, that the troops might be well accommodated, and the province be as little burdened as possible."

The council and house, in a joint message to the governor, excused themselves, and supposed the barracks at the castle, which were intended to accommodate one thousand men, together with the barrack utensils, fire, and light, were all the provision proper to be made by the province.

The next session began the 23rd of November. In the recess*, recruiting parties arrived in Boston from Nova Scotia. They made application to the governor for quarters. He directed them to apply to the magistrates in Boston. They declined doing anything. Upon representation to lord Loudon, at New York, he sent an express to the governor; made a demand, in form, of quarters in the town of Boston, alleging, that the act of parliament for quarters extended to the colonies, which made any provincial law unnecessary; complained of the magistrates in Boston for not complying with the act of parliament; and added, that he had ordered his messenger to wait forty-eight hours for an answer, and if, within that time, his demand was

* Mr. Belcher, the governor of New Jersey, died August 31. Mr. Pownall's commission for lieutenant-governor of that province had not been superseded in form. He went from Boston, in order to take upon him the administration of government there. Upon his leaving Massachusetts, the council became the governor. His stay was short at New Jersey. As soon as he left that province, his authority there was at an end. In about three weeks he returned to Boston, finding it impracticable to retain the administration of both provinces, at one and the same time.

not

1757 not complied with, he would march one regiment which he had in Connecticut, another which was at Long Island, and a third at New York; and observed, that he had two more in Pennsylvania, and, if they began their march, he would on no terms revoke them, until they arrived in Boston.

The assembly having met before this letter arrived, the governor laid the letter before them, and recommended it to their serious and immediate consideration.

It is probable that the governor himself was of opinion that the act of parliament did not extend to America; for, in three or four days, an act of the province passed the three branches of the legislature, making provision for quartering troops in publick houses, as similar to the provisions made by act of parliament, as the difference between the circumstances of the kingdom and those of the province would admit. Upon transmitting a copy of this act to lord Loudoun, he was dissatisfied, and would not allow that the assembly had any concern in the dispute; and added, *that, in time of war, the rules and customs of war must govern.*

This also was laid before the assembly, and produced a message to the governor declaring the opinion of the assembly, that the act of parliament did not extend to the plantations, and that *the rules and customs of war were not the rules which the civil magistrate was to govern himself by*, but that a law of the province was necessary for his justification. The governor's letter, or perhaps further consideration upon the subject, abated the resentment of the general, and caused some change of sentiments. The answer which he wrote to it, being communicated to the assembly, produced a memorable message to the governor, which so fully expresses the sense which they then had of the constitutional authority

authority of parliament, that it seems to be very 1757 proper to insert it at large in the margin*.

The expectation of favour from parliament, in
the

* " May it please your excellency,

" We are very glad to perceive by the letter from his excellency the earl of Loudoun, which you have been pleased to direct the secretary to lay before us, that the conduct of the general court is so well approved of, and that he has, thereupon, countermanded the orders which he had given for marching the troops to be quartered and billeted within this province.

We thank your excellency for your good offices in our behalf, and for the care and pains which we are sensible you have taken to avert the troubles which seemed to be coming upon us. We doubt not, that future assemblies will act upon the same principles with this assembly; and that the Massachusetts province will always deserve the favourable opinion of the general of his majesty's forces.

We wish to stand perfectly right with his lordship, and it will be a great satisfaction to us, if we may be able to remove his misapprehension of the spring and motive of our proceedings.

His lordship is pleased to say, that we seem willing to enter into a dispute upon the necessity of a provincial law to enforce a British act of parliament.

We are utterly at a loss what part of our conduct could give occasion for this expression. The point in which we were obliged to differ from his lordship was the extent of the provision made by act of parliament for regulating quarters. We thought it did not reach the colonies. *Had we thought that it did reach us, and yet made an act of our own to enforce it, there would have been good grounds for his lordship's exception*, but being fully persuaded, that the provision was never intended for us, what better step could we take, than, agreeable to the twentieth section in the articles of war, to regulate quarters as the circumstances of the province require; but still, as similar to the provision made in England as possible? And how can it be inferred from thence, that we suppose a provincial act necessary to enforce an act of parliament?

We are willing, by a due exercise of the powers of civil government, (and we have the pleasure of seeing your excellency concur with us,) to remove, as much as may be, all pretence of necessity of military government. Such measures, we are sure, will never be disapproved by the parliament of Great Britain, *our dependence upon which we never had a desire, or thought, of lessening*. From the knowledge your excellency has acquired of us, you will be able to do us justice in this regard.

F

In

1757 the reimbursement of their expenses, induced the council and assembly to make and publish so explicit a declaration of their principles, lest the construction which the general had put upon their refusal to conform to the mutiny act might operate to their prejudice. They were nevertheless the real principles of those who made the declaration, and not merely pretended, to serve a purpose.

The governor, observing that his predecessor had suffered the house to take to themselves some share of that military authority, which the charter gives to the office of governor, endeavoured to make a reform. In the grants of money for the defence of the province, the house, with whom all grants must originate, in several late instances, had appropriated the money granted, to the payment of such a number of men as should be posted in such places, or employed in such service, as the votes of the house expressed, and restrained the governor and council from drawing it out of the treasury for any other purpose. Mr. Shirley, to keep the house in good humour, and thereby to promote his general design, had submitted

In our message to your excellency, which you transmitted to his lordship, we declared that the act of parliament, the extent of which was then in dispute, as far as it related to the plantations, had always been observed by us.

The authority of all acts of parliament which concern the colonies, and extend to them, is ever acknowledged in all the courts of law, and made the rule of all judicial proceedings in the province. There is not a member of the general court, and we know no inhabitant within the bounds of the government, that ever questioned this authority.

To prevent any ill consequences which may arise from an opinion of our holding such principles, we now utterly disavow them, as we should readily have done at any time past, if there had been occasion for it; and we pray that his lordship may be acquainted therewith, that we may appear in a true light, and that no impressions may remain to our disadvantage."

This address or message was drawn up by Mr. Hutchinson, then a member of the council, and of the committee.

to

to this invasion. Mr. Pownall for some days suf- 1757
fered a grant, made in this form, to lie before him;
and endeavoured to prevail on the house to de-
part from this irregularity; but they were tenacious
of it, and he gave his assent, protesting against the
vote as a breach of the constitution*. No notice
was taken of this in England, where there was no
disposition to contend with the colonies, nor any
apprehension of serious consequences from the ad-
vances made by the people upon the prerogative.

The Massachusetts assembly, which had been
used to take the lead, proposed to the other New
England assemblies a meeting by commissioners, to
agree upon measures for the defence of the New
England colonies. New Hampshire and Rhode
Island returned no answer to this proposal. Con-
necticut appointed commissioners, who met the
Massachusetts commissioners at Boston, and a plan
of measures was agreed upon, and New Hamp-
shire and Rhode Island were invited to accede;
but the whole affair dropped, by the neglect of the
assemblies to act upon the report of the commis-
sioners†.

Lord Loudoun, soon after, appointed a meeting of 1758
the governors of New York and of the New Eng-
land colonies, or of commissioners from the colonies,
together with such officers of the army as he thought

* I will, to prevent the distressed state that the inhabitants must
be reduced to, by this your conduct, sign my consent to the esta-
blishment of pay and subsistence, that you have provided by that
vote; at the same time declaring to you, that I protest against the
breach you have made upon the constitution of your charter, and
the infringements on the rights of the crown.—*Extract from gover-
nor Pownall's message to the house, January 25th, 1758.*

† The commissioners for Massachusetts Bay were Thomas
Hutchinson, William Brattle, John Choate, John Tyng, and Benja-
min Pratt. For Connecticut, Ebenezer Silliman, Jonathan Trum-
bull, and William Walcot.

1758 fit, to be held at Hartford in Connecticut, the 20th of February, where he intended to lay before them a plan of measures for the ensuing year. The governors of Massachusetts Bay, New York, and Connecticut, and two commissioners from Rhode Island, met accordingly; but it soon appeared, that whatever might be the private opinions of the governors or commissioners, they could not ensure the concurrence of the assemblies. The general, not being able to effect his purpose at this meeting, went forward to Boston, hoping to succeed as well there as he had done the last year. But he was disappointed. He came to town the first day of the session of the assembly. The governor, in his speech, recommended to make provision for a suitable body of forces to co-operate in aid and assistance to his majesty's troops, *to the eastward*.

This gave room to conjecture that another expedition to Louisburg was intended. The season was advanced, and there was no time to spare. Twenty-two hundred men was the full number desired. From some cause or other, the general and the governor did not perfectly harmonize. The proposal laboured in the assembly. Six days were spent without any vote. Certain queries were then laid before the general, to which answers were desired. How long are the men to continue in service? What officers are they to be under? Where is the command to be? How are they to be paid, armed, and victualled? What is their destination? What will be the whole force, when they shall have joined it?

The general was much displeased with these queries, considered them as dilatory pleas, and was deliberating in what manner to reply to them, when an express came to town from New York, bringing intelligence that the earl of Loudoun was superseded, and major-general Abercrombie appointed commander-

mander-in-chief of his majesty's forces *. The same 1758 express brought letters to the governor from the secretary of state, Mr. Pitt, recommending, in the strongest terms, an exertion on the part of the province, and giving encouragement that a compensation should be made in proportion. It was expected, that the forces would be employed in the reduction of Canada; the object, above all others, wished for by the people of New England. The house now made no queries, but came immediately to a resolve, "to raise seven thousand men by enlistment for the intended expedition against Canada, to be formed into regiments under such officers, being inhabitants of the province, as his excellency the captain-general shall appoint; to continue in service no longer than the first of November, and to be dismissed as much sooner as his majesty's service shall admit."

This was the greatest exertion ever made by the province. From the proposal made by Lord Loudoun, they expected nothing more than another attempt upon Louisburg. Now, they had in view the country westward, considered the reduction of Ticonderoga and Crown Point to be certain, and that the possession of all Canada would soon follow. But the benefits expected from this acquisition were nothing more than a freedom from that distress which they were liable to, every time a war broke out between England and France. Whenever America should be actually subject to the supreme authority of the British empire, there would be no longer any reason to fear French nor Indian enemies, which had been a scourge to the colonies from their first settlement. An empire, separate or distinct from Britain, no man then alive expected, or desired,

* Lord Loudoun left the town the next morning, and began his journey to New York.

to

1758 to see. From the common increase of inhabitants, in a part of the globe which nature afforded every inducement to cultivate, settlements would gradually extend; and, in distant ages, an independent empire would probably be formed. This was the language of that day.

Seven thousand men was a great proportion of the whole people to be raised, and sent out of the province. The bounty to enlist was large; the wages of a soldier were much higher than those of any soldiers in Europe. Many officers depended upon the number of men they could enlist, to entitle them to their commissions. Four thousand five hundred only could be raised by voluntary enlistment, and the remaining twenty-five hundred, by a subsequent act or order of court, were drawn from the militia, and impressed into the service. Between two and three thousand men were raised by the other colonies, which made more than nine thousand provincials, who, with between six and seven thousand regulars and rangers in the king's pay included, all marched to lake George, where general Abercrombie in person was in command. Lord Howe arrived in Boston, from England, after the forces had left the province, and, immediately upon his landing, began his journey, and joined the army before any action took place.

This body of men, the greatest which had ever been assembled in arms in America, since it was settled by the English, embarked on lake George, the 5th of July, for the French fortress at Ticonderoga, and landed the next day at a cove, and landing-place, from whence a way led to the advanced guard of the enemy. Seven thousand men, in four columns, then began a march through a thick wood. The columns were necessarily broken; their guides were unskilful; the men were bewildered and lost; and

and parties fell in one upon another. Lord Howe, 1758 the life of the army, at the head of a column which was supported by the light infantry, being advanced, fell in with a party of the enemy, consisting of about four hundred regulars and some Indians. Many of them were killed, and one hundred and forty-eight taken prisoners. This, however, was a dearly purchased victory, for lord Howe* was the first who fell on the English side. Whether shot by the enemy, or by his own people, was uncertain. One of the provincial colonels present supposed the last, not merely from the disorderly firing, but from a view of the body; the ball entering, as he said, at his back, when he was facing the enemy.

The report of his death caused consternation as well as grief, through the army; which had placed much confidence in him.

The troops returned, the next day, to the place where they landed, much fatigued. Colonel Bradstreet, having been sent with a detachment to take possession of a saw-mill at about two miles distance

* The general assembly at Massachusetts Bay, upon a suggestion from the governor to some of the members, testified their respect to the memory of lord Howe, by granting a sum of money for a monument, which has been placed in Westminster Abbey.

"In the house of representatives.

The great and general court, bearing testimony to the sense which the province had, of the services and military virtues of the late lord viscount Howe, who fell in the last campaign, fighting in the cause of the colonies, and also to express the affection which their officers and soldiers bore to his command,

Ordered, that the sum of two hundred and fifty pounds be paid out of the publick treasury, to the order of the present lord viscount Howe, for erecting a monument to his lordship's memory, to be built in such manner, and situated in such place, as the present lord viscount Howe shall choose, and that his excellency the governor be desired to acquaint his lordship therewith, in such manner that the testimony be engraved on such monument.

In council read and concurred.

Consented to by the governor."

from

1758 from the main body of the enemy at Ticonderoga, found it deserted.

The army marched there that evening. The prisoners agreed in their accounts, that the enemy's force was about six thousand men, of which eight battalions were regular troops, the remainder Canadians and Indians; that they were encamped before the fort, and were enclosing their camp with the best breast-work they could, by falling trees with their branches interwoven, &c.; that three thousand men had been sent off under Monsieur de Levi, mostly Canadians and Indians, to the Mohawk river, but, upon news of the approach of the English army, had been recalled, and were expected every hour.

From this intelligence, the general thought no time ought to be lost, and that an attack should be made without delay.

Early in the morning of the 8th, Mr. Clerk, the chief engineer, was sent to reconnoitre. He judged it practicable to carry the works, if attacked before they were completed. It was, thereupon, resolved to begin immediately.

The whole army, except a guard for the boats, and a provincial regiment at a saw-mill, was in motion. The attack was to be made by the regular forces, who had orders to march up to the breast-work, rush upon the fire of the enemy, but not to fire themselves until they should be within the works.

The provincials in the rear were to support the regulars, who advanced with great bravery, but were surprised to find the intrenchment much stronger than represented.

The enemy were within a breast-work, which had been thrown up eight or nine feet high. The ground before it was covered to a considerable breadth with trees fallen one upon another, and the branches interwoven so thick as to bar the passage of the troops, while they were exposed to the swivel guns and
small

small arms of the enemy incessantly firing upon 1758 them. The provincials, generally undisciplined, could not be kept from firing in the rear, and at random; and some of their own officers admitted, that some of the regulars probably fell by that circumstance. Major Proby, lieutenant-colonel Bever, and other officers, were killed whilst attempting to mount the breast-work; which but a small part of the army had reached, when they were called off from the attack, which had been several times repeated, the whole action having continued two or three hours.

About five hundred regulars were killed upon the spot, and about one thousand two hundred wounded. Of the provincials one hundred were killed, and two hundred and fifty wounded.

The army still consisted of thirteen or fourteen thousand.

The enemy was much inferior in number. The retreat, nevertheless, was precipitate. Early in the morning of the 9th the whole army embarked in their boats, and arrived at the other end of the lake, and landed in the evening*. Provisions, intrenching tools, and many stores, of various kinds, fell into the hands of the enemy. The English arms have rarely suffered greater disgrace.

Before the news of this ill success, the governor of Massachusetts Bay had acquainted the general, that the militia were ordered to hold themselves in readiness. After the repulse, the general thanked him for the orders, but hoped he should not want the men. Letters came also to the governor, to be forwarded to general Amherst, at Louisburg, to call him from thence, as soon as the service would admit.

* The wounded men were sent to the batteaus on the evening of the 8th, with orders to the commanding officer at Fort William Henry, to send them, with the prisoners and heavy artillery, to New York.

These

1758 These letters never were received by general Amherst, nor was it known how they could miscarry. The failure caused a delay until duplicates came to hand; and he did not arrive in Boston until the 18th of September. He began his march from Boston to Albany, with four thousand five hundred men, on the 16th.

Whether any further attempt would have been made that year, if they had arrived sooner, is doubtful. It is certain that, whatever may have been in contemplation, nothing was done, and general Amherst, in a short time, himself returned to Boston, and went from thence to Halifax.

In the interval between the repulse at Ticonderoga and the arrival of general Amherst, colonel Bradstreet, with three thousand of the provincials, and one hundred and twenty regulars, stole a march upon Montcalm, and before he could send a detachment from his army to lake Ontario, by the way of St. Lawrence, went up the Mohawk river. About the 25th of August, they arrived at fort Frontenac, surprised the garrison, who were made prisoners of war, took and destroyed nine small vessels and much merchandise; but having intelligence of a large body of the enemy near, they made haste back to Albany. It was an expedition of *éclat*. The men complained of undergoing greater hardship than they had ever undergone before, and many sickened and died by the fatigue of the march.

Louisburg was reduced this year, by the fleet under admiral Boscawen, and the army under general Amherst. It did not surrender until the 26th of July. Whatever the plan may have been, it was too late to proceed upon an expedition up the river St. Lawrence. They had no knowledge then of Abercrombie's misfortune. Admiral Boscawen, after taking possession of the island St. John, included in the capitulation of Louisburg, sailed with the fleet for England.

An

An expedition for dispossessing the French of 1758 Fort du Quesne, near the Ohio, had, at first, a very unfavourable prospect. The English forces met with a variety of obstructions and discouragements; and, when they had advanced within thirty or forty miles of the fort, were at a stand, deliberating whether they should go forward, or not. Receiving intelligence that the garrison was in a weak condition, they pushed on. Upon their arrival at the fort, they met with no opposition. The enemy had deserted it some days before, for want of provisions, as was generally believed; and it was added, that the provisions intended to supply that fort were destroyed by Bradstreet at fort Frontenac. Its greatest security seems to have been the difficulty of coming at it, with an army furnished with artillery, &c.

The Massachusetts forces this year suffered much by mortality while in camp; and great numbers died by sickness upon the road and after their return; especially of those who were in Bradstreet's expedition*.

The ill success of general Abercrombie at Ticonderoga caused his recall. He seemed to expect, and desire it. He was succeeded by general Amherst.

Whatever might be the real intentions of go- 1759 vernment, in 1758, there was no room to doubt of its determination, in 1759, to prosecute with vigour an expedition against Canada. Mr. Pitt, in his letter to the governor, pressed with much earnestness, the raising, this year, of as many men as were raised the last; and promised, as he had done before, a recompense in proportion to the active vigour and strenuous efforts wherewith the province should exert itself.

* The commissions of Thomas Hutchinson, esq. for lieutenant-governor, and Andrew Oliver, esq. for secretary of Massachusetts Bay, were published in council, June 1, 1758.

The

1759 The difficulty of carrying the vote of the assembly, last year, for seven thousand men, into effect, caused a less number to be voted this year. The whole to be raised was five thousand only ; and, of these, four hundred were to be employed under the governor, as a guard or defence in building a fort at the mouth of the river Penobscot. This was consented to by the general at the governor's request. As the navy was in great want of seamen, it was also agreed, that as many men as would enlist for the sea service should be accounted part of the number ; and provision was made, that if the whole number did not enlist within a time limited, the deficiency should be made good by an impress.

The general was dissatisfied, and repeatedly made demands of additional numbers. At length, it was resolved to increase the bounty, in order to encourage one thousand five hundred more to enlist ; but if this encouragement should not effect the enlistment, there was no power to impress. The number, however, was nearly completed.

Notwithstanding the ill success of former attempts for the reduction of Canada, by the co-operation of an army by the river St. Lawrence, and another by lake Champlain, the same plan was laid again.

In two former expeditions, the forces intended by the lakes were of no use ; and the whole force of the enemy was at liberty to oppose the army by the river. There was the utmost hazard of failure this year, from the like cause.

It was proposed, with a large body of regulars and provincials, under general Amherst, to remove the French from Ticonderoga and Crown Point, and also from their fort at Niagara. The occupation of the two former by the English would open a way to Canada through lake Champlain.

In the month of July, general Amherst took possession

session of the enemy's lines at Ticonderoga, which 1759 they abandoned, after setting fire to the fort ; and, the beginning of August, the fort at Crown Point, having been abandoned also by the French, fell into the possession of the English.

Brigadier Prideaux had been sent with a proper force to besiege the fort at Niagara, and, on the 19th of July, walking in the trenches, was killed by the carelessness of his own gunner in firing a cohorn.

Colonel Gage, upon the intelligence of this loss, was sent from Crown Point by general Amherst to succeed brigadier Prideaux. Luckily for Sir William Johnson, who, as the next officer on the spot, took the command upon Prideaux's death, a body of one thousand two hundred men from Detroit, &c. making an attempt, on the 24th of July, to throw themselves into the fort as a reenforcement, were intercepted, and killed, taken, or dispersed ; and, the next day, the garrison capitulated. There were great obstructions to the passage of an army from lake Ontario into Canada by the river St. Lawrence. The general recommended to colonel Gage to take post at La Galette, but too many difficulties attended such an attempt, and it was laid aside ; and no assistance could be afforded to the army before Quebec from this quarter.

About the middle of the month of August, general Amherst received information at Crown Point, that M. Bourlemaque was encamped at Isle aux Noix with three thousand five hundred men, and one hundred cannon, and that the French had four vessels on the lake, under the command of the captain of a man of war. It was judged necessary to build a brigantine, a radeau, and a sloop of sixteen guns. There could be no prospect of having such a fleet ready until the beginning of October.

The fleet under Sir Charles Saunders, with the
army

1759 army under general Wolfe, arrived before Quebec the latter part of June. The general, after many unsuccessful attempts to gain the possession of that city, was, on the 2nd of September, in a critical situation, and, to use his own words, met with "such a choice of difficulties, as to be at a loss how to determine."

With an army, of which, he says, "between four and five thousand men were nearly the whole strength," he landed on the 13th of September, and, with the loss of his own life, obtained a victory over the enemy, which was made the more certain by the fall of Montcalm, the French general, about the same time with that of the English general.

General Monckton being shot through the lungs, which happily did not prove mortal, the completing of the victory, and the reduction of the city by capitulation, three days after, was reserved for general Townshend.

No communication could be opened between the two armies: but it is extremely probable, that, if a great part of the French force had not been withdrawn from Quebec to attend the motions of general Amherst, the attempt made by general Wolfe must have failed.

The Massachusetts forces this year were of great service. Twenty-five hundred served in garrison at Louisburg and Nova Scotia, in the room of the regular troops, taken from thence to serve under general Wolfe. Several hundred served on board the king's ships as seamen, and the remainder of the six thousand five hundred men, voted in the spring, served under general Amherst. Besides this force, upon application from general Wolfe, three hundred more were raised and sent to Quebec by the lieutenant-governor, in the absence of the governor at Penobscot. These served as pioneers, and in other capacities

capacities, in which the regulars must otherwise 1759 have been employed.

The city of Quebec was reduced. Montreal became the seat of the French governor. The inhabitants of Canada, in general, remained subjects of the French king, and a considerable military force was still within the province. General Amherst, on the 11th of October, embarked his army in batteaus, under the convoy of the armed vessels which he had caused to be built, and went from Crown Point part of the way down the lake; but meeting with bad weather and contrary winds, on the 19th, resolved to return to Crown Point, and to desist from any further attempt until the next year.

The fleet returned to England, and general Murray was left in command with a strong garrison at Quebec.

Such of the Massachusetts forces as had been sent to Louisburg and Nova Scotia were held in service, although the term for which they enlisted was expired. The remainder were discharged, and returned home.

General Amherst made application to the Massa- 1760 chusetts for the same number of men for the service of the next year as they had raised the last. The reduction of Canada was still the object. This alone was found to be a sufficient stimulus to the assembly, and they did not need other arguments from the governor. The generous compensations which had been every year made by parliament, not only alleviated the burden of taxes, which otherwise would have been heavy, but, by the importation of such large sums in specie, increased commerce; and it was the opinion of some, that the war added to the wealth of the province, though the compensation did not amount to one half the charges of government.

The assembly, at the session in January 1760,
first

1760 first granted a large bounty to the men in garrison at Louisburg and Nova Scotia, to encourage them to continue in service. A vote was then passed for raising five thousand men more, upon the same encouragement as those of the last year had received. Soon after, the governor received letters from Mr. Pitt, making the like requisition as had been made by him last year, and giving the same assurances of compensation. At the beginning of the year the English interest in Canada was in a precarious state. Quebec had been besieged in the spring, after a battle in which general Murray had lost a considerable part of his garrison. Fortunately, Lord Colville arrived at a critical time, and caused the siege to be raised.

This danger being over, and there being no probability of any French force from Europe, it seemed agreed, that all Canada must fall in the course of the summer. The Massachusetts enlistments went on but slowly. Only three thousand three hundred of the proposed five thousand men enlisted, and seven hundred only remained in garrisons at Louisburg and Nova Scotia.

A fire in Boston, the night after the 20th of March, exceeded the great fire, as it had always been styled, in 1711. It began in Cornhill, at a house known by the name of the Brazen Head, south of the town-house. Three or four houses were burnt, and the progress of it seemed to be stopped, when a violent wind at north-west came on suddenly, and it consumed, in that direction, between Cornhill and the harbour, one hundred and fifty houses great and small. The newspapers made the damage amount to three hundred thousand pounds sterling. A brief from the governor supposed, that, at a moderate computation, it amounted to at least one hundred thousand pounds. Others, who had observed the
increased

increased value of the land upon which the houses stood, estimated the loss at not more than fifty thousand pounds, and judged, that, if the donations could have been equally distributed, no great loss would have been sustained.

Governor Pownall's administration was short. In November 1759, it was thought proper to nominate him to the government of South Carolina, in the room of Mr. Littleton, appointed governor of Jamaica. Mr. Bernard, governor of New Jersey, was appointed to succeed Mr. Pownall.

The news of Mr. Pownall's recall did not arrive in Boston until the latter part of February. He continued there until the election of councillors was past for the year 1760, and sailed for England the 3rd of June.

CHAPTER II.

From the arrival of Governor Bernard, August 2nd, 1760, to his departure, August 2nd, 1769.

1760 **M**R. Bernard was detained in New Jersey, waiting for his commission longer than he expected. In this time the business of the assembly*, which Mr. Pownall had left sitting, was completed by Mr. Hutchinson, the lieutenant-governor, who made a short prorogation, that the new governor might have the earliest opportunity of meeting them, if he thought fit. The people had conceived a very favourable opinion of him, and evidenced it by publick marks of respect, as he travelled through the province, and upon his arrival at the seat of government.

The Massachusetts forces served this year, in conjunction with other provincials and about one thousand six hundred regulars, under colonel Haviland. They entered Canada from Crown Point by lake Champlain ; while general Amherst, with the troops under his immediate command, went from Albany, by the Mohawk river, to lake Ontario, and from thence by the river St. Lawrence ; and general Murray, with part of the army which was at Quebec,

* In this session an addition was made of five hundred men to the forces under general Amherst. The county of York was divided, and two new counties erected, Lincoln, and Cumberland, on the eastern side, the western part retaining the name of York.

went

went from thence up the same river. The three 1760 armies met about the same time at Montreal ; which facilitated the reduction of that city, and of course of the whole province of Canada.

The news of this event was brought to Boston on the 23d of September, and was no where received with greater joy, no part of the king's dominions being more interested in it.

Governor Bernard, in his speech to the assembly upon this occasion, very properly puts them in mind of " the blessings they derive from their *subjection* to Great Britain*, without which they could not now have been a free people ; for no other nation upon earth could have delivered them from the power they had to contend with."

The council, in their address, acknowledge that, " to their *relation* to Great Britain, they owe their present freedom," and then echo back, in imitation of the pattern they aimed to follow in addresses, that " no other nation upon earth could have delivered them from the power they had to contend with."

The house, without scrupling to make, in express words, the acknowledgment of their subjection, nevertheless explain the nature of it. They " are sensible of the blessings derived to the British colonies from their subjection to Great Britain ; and the whole world must be sensible of the blessings derived to Great Britain, from the loyalty of the colonies in general, and from the efforts of this province in particular ; which, for more than a century past, has been wading in blood, and laden with the expenses of repelling the common enemy ; without

* This could never intend any more than subjection to the supreme legislative authority of Britain, in common with their fellow subjects in the island. It has, however, been employed to alienate the subjects in the colonies from those in the island.

1760 which efforts, Great Britain, at this day, might have had no colonies to defend :” and in the same address they observe, that “the connection between the mother country and these provinces is founded on the principles of *filial obedience*, protection, and justice.”

These addresses have the appearance of caution, which I have not before met with in any publick papers since the revolution. Perhaps it was observed only by the persons who composed them, and not by the council or house in general.

The greatest hopes from the reduction of Canada, as far as could be judged from the publick prayers of the clergy, as well as from the conversation of people in general, was, “to sit quiet under their own vines and fig trees, and to have none to make them afraid.” All they had ever suffered, as a community, had been from their French and Indian neighbours. In every respect, except the charges which had been occasioned by Indian wars, they had felt less of the burdens of government, than any people besides, who enjoyed so much of the benefit of it. That their civil and religious privileges might be transmitted to the latest posterity, was an expression in general use among the clergy.

In Massachusetts Bay especially, there was a very general satisfaction with the form of government according to their charter. Although, under the first charter, the government had been more popular, the governor himself being annually elected, they were so fully satisfied with the new, that few persons, if any, wished to return to the old. From heats and animosities in popular elections in towns, they judged of the danger from such an election by all the people of the province.

The controversies between governors and their assemblies had been occasioned by different constructions of their respective powers, as derived from
from

from the charter ; but these were pretty well settled. When a people are in such a state, they are not apt to be disturbed by mere theoretical notions of government, or with ideas of any particular degree of natural liberty which it is not in their power to alienate. 1760

Speculative men had figured in their minds an American empire, as we have already observed, but in such distant ages, that no body then living could expect to see it. Besides, whilst the French remained upon the continent, the English were apprehensive lest, sooner or later, they should be driven from it. But as soon as they were removed, a new scene opened. The prospect was greatly enlarged. There was nothing to obstruct a gradual progress of settlements, through a vast continent, from the Atlantic to the Pacific Ocean.

The two colonies of Massachusetts Bay and Connecticut claimed, by charters, the property of this vast territory, at their sole disposal, so far as came within the latitudes to which they were limited ; the small territory, possessed by Pennsylvania and New York, only excepted.

Men whose minds were turned to calculations found that the colonies increased so rapidly, as to double the number of inhabitants in a much shorter space of time than had been imagined.

From the number of inhabitants then in the several colonies, and a supposition that, for the time to come, they might increase in the same proportion as in the time past, the colonies would soon exceed the parent state.

These considerations did not, of themselves, immediately occasion any plan, or even a desire, of independency. They produced a higher sense of the grandeur and importance of the colonies.

Advantages in any respect, enjoyed by the subjects in England, which were not enjoyed by the sub-

1760 subjects in the colonies, began to be considered in an invidious light, and men were led to inquire, with greater attention than formerly, into the relation in which the colonies stood to the state from which they sprang.

Every argument which would give colour for the removal of this distinction was favourably received: and from various events, men were prepared to think more favourably of independency, before any measures were taken with a professed design of attaining to it.

Governor Bernard had been but a few weeks in the province, when he found himself under the necessity either of making a particular family, and its connections, extremely inimical to him, or of doing what would not have been approved of by the greater part of the province.

Upon the death of the chief justice*, the first surviving judge, and two other judges, together with several of the principal gentlemen of the bar, signified their desire to the governor, that he would appoint the lieutenant-governor to be the successor. When Mr. Shirley was in administration he had encouraged, if not promised, a gentleman at the bar†, that, upon a vacancy in the superior court, he should have a seat there. A vacancy happened, and Mr. Shirley, from a prior engagement, or for some other

* Stephen Sewall, esq. who died in Boston, September 11, 1760, and who, for more than twenty years, first as a judge, and for the last eight years, as chief justice, gave universal satisfaction to the people of the province. He was first designed for the church, continued many years as a tutor at the college, at length applied to the study of the law, but never practised at the bar, which, it may be, was no disadvantage to him as a judge. He distinguished himself in every character, publick and private; was universally esteemed while he lived, and his death was lamented by all. His name should be transmitted with honour to posterity.

† James Otis, esq., of Barnstable.

reason

reason, disappointed him. He was at this time 1760 speaker of the house of representatives, and he made application to governor Bernard, that the first surviving judge might be appointed chief justice, and that he might take the place of a judge. His son* also, with great warmth, engaged in behalf of his father, and, not meeting with that encouragement which he expected, vowed revenge, if he should finally fail of success.

Several weeks elapsed, before any nomination was made, or any thing had passed between the governor and lieutenant-governor, upon the subject. At length it was intimated to the lieutenant-governor, that the governor, when he had been applied to by many persons in his behalf, was at a loss to account for his silence upon the subject. This caused a conversation, in which the lieutenant-governor signified that he had desired no persons to apply in his behalf, and had avoided applying himself, that the governor might the more freely use his own judgment, in appointing such person as should appear to him most fit. And soon after, upon the lieutenant-governor's being informed of the governor's intention to nominate him to the place, he gave his opinion, that a refusal to comply with the solicitations which had been made to the governor by the other person, would cause a strong opposition to his administration, and, at the same time, assured the governor, that he would not take amiss the compliance, but would support his administration with the same zeal as if he had been appointed himself.

The governor declared that, if the lieutenant-governor should finally refuse the place, the other person would not be nominated. Thereupon, the lieutenant-governor was appointed. The expected oppo-

* Mr. Otis, author of the first political pamphlet upon the rights of Americans.

1760 sition ensued. The resentment in the disappointed persons was also as strong against the lieutenant-governor for accepting the place, as if he had sought it, and had opposed their solicitations. Both the gentlemen had been friends to government. From this time they were at the head of every measure in opposition, not merely in those points which concerned the governor in his administration, but in such as concerned the authority of parliament; the opposition to which first began in this colony, and was moved and conducted by one of them, both in the assembly and the town of Boston. From so small a spark a great fire seems to have been kindled.

The news of the demise of king George the Second was received in Boston the 27th of December, 1760. There was no room to doubt the truth of it. The people on board a ship which arrived from an out port in England, all agreed in it, and the newspapers contained an account of it, and of the accession of king George the Third, as published by authority in the London Gazette. There was no official advice, and, upon the governor's consulting the council, some doubted the propriety of proclaiming a new king, until directions should be received, from the secretary of state, in his name. Others were of opinion that it was justifiable. It was a season of the year, when it was probable that many weeks would pass before orders arrived, and it would have a strange appearance, if all writs, processes, and public acts of every kind, continued, all that time, in the name of a prince known to be in his grave*. Upon consulting precedents, they were in favour of the last opinion, and the king was proclaimed on the 30th of December †.

A

* There is great room, notwithstanding, to question the propriety of the measure.

† On Thursday, January 1st, the governor, council, &c., went into mourning.

A short time only passed, before Mr. Otis, the son, 1761 appeared at the head of a party, not in opposition to any act of the governor, but to the past transactions of officers in the court of admiralty, in whose defence the governor would probably be engaged.

The act of parliament of the 6th of George the Second, which imposed a duty of sixpence per gallon upon all foreign molasses imported into the colonies, gave one-third part of the forfeiture to the king, for the use of the colony where the forfeiture should be made, one-third to the governor, and the other to the informer.

The act, though it had been made near thirty years, and large sums had been forfeited, was always deemed a grievance. The assembly had suffered the share given to the province to lie in the court. It had, besides, been the practice of the court, to allow to the informer what he gave for private information, and to charge it upon the third given to the king for the colony, (which third no body appeared to demand,) and not upon the whole forfeiture. The like practice had before obtained, in all forfeitures where the crown, for its own use, was entitled to one-third.

Mr. Otis, bred to the law, and at that time a practitioner in the courts, took the advantage of this irregularity. The merchants, some of whom had been affected by these forfeitures, were easily brought by a committee to prefer a petition to the general assembly, praying to be heard by counsel; which was granted, and Mr. Otis was the person employed.

mourning. In the morning, a sermon was preached in the meeting-house, by Mr. Cooper, one of the ministers of Boston, when the whole general assembly attended. The governor proposed to the rector of King's chapel to preach there, in the afternoon: and the council and assembly attended with him. This is the only instance of a sermon preached before the general assembly in an episcopal church.

It

1761 It was proposed that actions should be brought, in behalf of the province, against the custom-house officers to whom these illegal charges had been allowed, for the recovery of monies had and received for the use of the province.

The house was easily induced to a compliance with the prayer of the petition. Mr. Otis, when before the council, undertook to support such an action, and was very sanguine that it could not be withstood. Opposition, however, was made in council; and it was plainly shewn, that no such action could lie. The superior court, having all the powers within the province of the court of king's bench in England, might put a stop to the proceedings of the court of admiralty, whenever it took cognizance of a cause not within its jurisdiction, by a writ of prohibition; but in this case, jurisdiction had been expressly given, by an act of parliament, to the court of admiralty. The province might have appeared by an attorney, and have taken exceptions to the decree, and, if the exceptions had not prevailed, might have brought an appeal to the high court of admiralty in England; but the opportunity was wilfully slipped, and there was now no remedy. It was said, however, that the people were dissatisfied, and that it would not be believed that there was no remedy, unless there was a trial: and a majority of the council concurred with the house.

The governor, at first, declined his assent, and, in a message to the house *, gave as the only reason,

* Though both houses professed to pay great regard to forms of proceeding in parliament, they were not strictly adhered to. After a vote, or even a bill, had passed both houses, the governor would sometimes decline his assent in the form it had passed, and propose amendments or alterations; and they have been agreed to: which is not warranted by the practice of parliament. This irregularity was encouraged, in Mr. Shirley's administration, to facilitate his measures necessary to be carried through the assembly.

their

their appointing the province treasurer to bring the 1761 action ; whereas, the money sued for being granted to the king, the king's attorney was the person in whose name the action should be brought.

This objection from the governor was really of no weight, because the money was granted to the king for the use of the province ; and all money belonging to the province had always been sued for by the treasurer ; particularly all arrears of taxes, which had always been granted, in name, to the king, though really for the use of the province. But he hoped to prevent Mr. Otis from carrying on the suit. The two houses declined making any alteration in the vote.

The governor, in his message, had intimated, that his consent to the vote in that form would expose him to the displeasure of the king. When he found how unpopular it would be to refuse his assent, he laid the matter before the council, and demanded their advice ; and they advised him, " on that occasion, to wave his own opinion, how well soever founded." Thereupon, he gave his assent to the vote. This caused triumph, as they had compelled the governor to depart from what he had declared to be his judgment. But when the cause came upon trial, it was very feebly supported, by shewing that the charges ought not to have been allowed by the court of admiralty ; and by representing that court, as not congenial with the spirit of the English constitution, for which reason no indulgent construction ought to be allowed to their proceedings.

The court summed up the cause to the jury, so as to shew that the action had not been supported ; and cautioned them against departing from the rules of law, and consequently from their oaths, in compliance with popular prejudices : and, contrary to the prevailing expectation, they found costs for the defendants.

The

1761 The authority of acts of parliament had never been called in question as the rule of law, when they plainly extended to the colonies. In a message from the two houses to the governor, upon the subject of this trial, they acknowledge, "that every act of the province, repugnant to an act of parliament extending to the plantations, is *ipso facto* null and void*." Juries were disposed to receive the law from the court, and could not easily be induced to depart from their oaths.

Whilst this process was depending, Mr. Otis, who carried it on, was equally sedulous in promoting another measure, which tended to raise heats and animosities, and to destroy the powers of government.

The collectors and inferior officers of the customs, merely by the authority derived from their commissions, had forcibly entered warehouses, and even dwelling houses, upon information that contraband goods were concealed in them.

The people grew uneasy under the exercise of this assumed authority, and some stood upon their defence against such entries, whilst others were bringing their actions in the law against the officers, for past illegal entries, or attempts to enter.

When Mr. Shirley was in administration, he, as the civil magistrate, gave out his warrants to the officers of the customs to enter.

This appears more extraordinary, as Mr. Shirley was a lawyer by education, and was allowed to be a man of good sense. These warrants, however, were in use some years. At length, the surveyor and searcher being one day about to break open a warehouse, upon an information of iron imported from Spain being concealed there, a gentleman †, who was

* Appendix A.

† Mr. Hutchinson, at that time one of the council.

brother

brother to the owner of the warehouse, and also a 1761 friend to the surveyor and searcher, enquired what authority he had to enter, and, thereupon, he shewed the governor's warrant. The gentleman, who knew the information to be ill-founded, sent for the keys, and caused the warehouse to be opened; and, at the same time, assured the surveyor, that, if he had forced an entry, an action would have been brought against him, his warrant being of no value.

This put the governor upon examining the legality of his warrants, and caused him to direct the officers to apply for warrants from the superior court; and, from that time, writs issued, not exactly in the form, but of the nature, of writs of assistance issued from the court of exchequer in England.

Upon application made to the court by one of the custom-house officers, an exception was taken to the application; and Mr. Otis desired that a time might be assigned for an argument upon it. The motion was the more readily complied with, because it was suggested, that the late chief justice, who was in high esteem, had doubts of the legality of such writs.

It was objected to the writs, that they were of the nature of general warrants; that, although formerly* it was the practice to issue general warrants to search for stolen goods, yet, for many years, this practice had been altered, and special warrants only were issued by justices of the peace, to search in places set forth in the warrants; that it was equally reasonable to alter these writs, to which there would be no objection, if the place where the search was to be made should be specifically mentioned, and information given upon oath. The form of a writ of assistance was, it is true, to be found in some registers, which was general, but it was affirmed, with-

* Dalton's Justice.

1761 out proof*, that the late practice in England was otherwise, and that such writs issued upon special information only.

The court was convinced that a writ, or warrant, to be issued only in cases where special information was given upon oath, would rarely, if ever, be applied for, as no informer would expose himself to the rage of the people. The statute of the 14th of Charles II. authorized issuing writs of assistance from the court of exchequer in England. The statutes of the 7th and 8th of William III. required all that aid to be given to the officers of the customs in the plantations, which was required by law to be given in England. Some of the judges, notwithstanding, from a doubt whether such writs were still in use in England, seemed to favour the exception, and, if judgment had been then given, it is uncertain on which side it would have been. The chief justice was, therefore, desired, by the first opportunity in his power, to obtain information of the practice in England, and judgment was suspended. At the next town, it appeared that such writs issued from the exchequer, of course, when applied for; and this was judged sufficient to warrant the like practice in the province. A form was settled, as agreeable to the form in England as the circumstances of the colony would admit, and the writs were ordered to be issued to custom-house officers, for whom application should be made to the chief justice by the surveyor-general of the customs.

The ill success of these two attempts seemed to have a tendency to check and discourage the spirit of opposition; but it had a contrary effect. The people were taught that innovations, under pretence of law, were now confirmed by judgments of court

* The authority was a London magazine.

incompatible with English liberties, and that the 1761 authority of courts of admiralty, and the powers of custom-house officers, always deemed grievous because unconstitutional, were now established by judges devoted to the prerogative.

Mr. Otis's zeal in carrying on these causes was deemed as meritorious as if it had sprung from a sincere concern for the liberties of the people. His resentment against the governor was not charged upon him as the motive. The town of Boston, at their next election*, shewed the sense they had of his merit, by choosing him one of their representatives in the general assembly.

Government in England thought it necessary to keep up in America a considerable part of the military force, notwithstanding the reduction of Canada, until peace should be established.

An expedition was determined to be carried on this summer, against the French islands; and great part of the regular troops were to be taken from the continent for that service. Massachusetts Bay was called upon to assist in supplying provincial troops in their stead, by raising two-thirds as many men as they raised the last year. Three thousand men were resolved upon; but great opposition was made, and the vote was kept four days on the table of the house; and then a motion was made for reconsidering it; but it did not prevail, and the vote passed the several branches.

Governor Bernard saw a strong party forming, at the head of which, ostensibly, was Mr. Otis, the son; but the father, being speaker of the house, was a great support to it.

The governor flattered himself that he should be able to reconcile to him, both father and son.

By the demise of the king, all civil as well as

May 1761.

military

1761 military commissions must be renewed. This was the only opportunity which a Massachusetts governor could have, of nominating persons to office, at pleasure. When he came to settle the county of Barnstable, where the speaker lived, he made him an offer of taking to himself the principal offices in the county, and of naming many of his relations and friends to other offices; and the whole county was settled to his mind. He took for himself the place of first justice of the county court of common pleas, and also that of judge of probate, which gives much weight and influence in the county.

Mr. Otis, the son, soon after appeared in favour of a grant, made by the assembly to the governor, of the island of Mount Desert; and there was the appearance of reconciliation. It lasted but a short time. Places granted by a Massachusetts governor could not be taken away again at pleasure, except places in the militia, which were not much valued, after the title and rank, derived from them, were once acquired.

1762 The successes of the year 1761 gave a general expectation of peace, which was disappointed by the intermeddling of the Spaniards.

The Massachusetts, therefore, was again called upon for the like number of men as had been in service the last year, to serve upon the continent, while the regulars were to be employed in an important service elsewhere. The assembly determined to raise three thousand two hundred men, which number was satisfactory. They also voted a bounty of seven pounds per man, to encourage the enlistment of eight hundred and ninety-three men into the regular troops. This is a singular instance.

Men were raised with greater ease than ever. By habit, they became fond of the life of a soldier. The number, now required, being not half what had been
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been required in several former years, there was 1762 not room for many who were inclined to serve, and who, thus, were obliged to remain at home.

This provision was made, at a session of the assembly in the winter after 1761.

Another session, for election, in the summer following, passed in quiet, the ordinary business of the province going on without opposition.

Soon after it was finished, the fishing towns were alarmed with the news of a French force which had taken possession of St. John's, Newfoundland, and the inhabitants of Salem and Marblehead petitioned the governor and council, to cause a ship and sloop, then in the service of the province, to be fitted out and employed for the guard and security of the vessels employed in fishing. The council advised to an additional number of men on board the sloop, and to a bounty for the encouragement of men to enlist to make up the complement of the ship. The whole expense did not exceed three or four hundred pounds sterling.

In September the assembly met again.

The governor among other things, in his speech, took notice of this small expense, which had been incurred in the recess; and afterwards, in a message, recommended to them to make provision for the continuance of pay to the additional number of men on board the sloop.

This exercise of authority, by the governor and council, was to be justified as far as precedents, from the date of the charter, could justify it. In this instance, notwithstanding, as unexceptionable perhaps as any other whatever, the house thought fit to take exception; and, in a remonstrance composed by Mr. Otis, to declare against such a practice, as taking from the house "their most darling privilege, the right of originating all taxes," and as "annihilating one branch of the legislature." They

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say

1762 say, "it would be of little consequence to the people, whether they were subject to George or Louis, the king of Great Britain or the French king, if both were as arbitrary as both would be, if both could levy taxes without parliament;" and conclude with praying the governor, "as he regards the peace and welfare of the province, that no measures of this nature be taken for the future, let the advice of council be what it may."

When the remonstrance was delivered to the governor, he sent it back in a private letter to the speaker, and advised him to recommend to the house to expunge from it, and from their record, that passage in which the king's name was used with a freedom which was not decent. Mr. Otis resisted the proposal, but was content that some qualifying words should be brought in, as, "with due reverence to his majesty's sacred person," or the like; but the friends to government cried out "erase them,—erase them,"—and they were ordered to be expunged*. No further notice was taken of the remonstrance. It was calculated to raise a spirit against the council, of which the lieutenant-governor was president, and whose character was attacked in newspaper publications, to some of which Mr. Otis affixed his name.

The currency of Massachusetts Bay had been under as good regulation as possible, from the time that paper had been exchanged for silver, which was made the standard at 6s. 8d. the ounce. Gold was not a lawful tender, but passed current at fixed rates, a guinea at 28s., a moidore at 36s., &c., being nearly the same proportion that gold bore to silver in Europe at the time when the paper-money was

* Mr. Otis justified the remonstrance, and his conduct relative to it, in a pamphlet which he published soon after the session was over.

exchanged.

exchanged. Silver bullion, for a year or two past, 1762 had advanced in price, in England, from 5s. 3d. to 5s. 7d. an ounce. A greater proportion of silver than of gold had been exported, and people, who observed the scarcity of silver, were alarmed. A bill was brought into the house of representatives and passed, making gold a lawful tender at the rates at which the several coins had been current for many years past.

The bill was now concurred in council, and a conference ensued between the two houses, the lieutenant-governor being at the head of the managers for the council, and Mr. Otis of those for the house.

The only argument on the part of the house was the danger of oppression upon debtors, by their being obliged to procure silver at disadvantage.

On the part of the council, it was said, that the proportion between silver and gold was different at different times; that one only ought to be the standard, and the other considered as merchandise; that, silver being made the standard in the province, it behoved government rather to reduce the rate at which gold coin should pass, so as to make the proportion between gold and silver the same in the province as in Europe; that, in such case, there would be the same profit upon exporting gold as silver; but as one metal was made the standard and the only lawful tender, it was not advisable for government to regulate the other, but to leave it to take its chance; and that there was no other way of securing the currency from depreciation.

The house was much engaged to carry the bill through, but the council stood firm and rejected it*.

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* In a session of the assembly, some time after, this bill passed into an act, and gold as well as silver was made a lawful tender.

1763 There seems to be no reason for engaging men more on one side the question than the other, in this dispute, only as one side might appear to them more just and reasonable than the other; but the lieutenant-governor having taken one side of the question, Mr. Otis took the other; and the court and country parties took one side and the other with much of the same spirit, as if it had been a controversy between privilege and prerogative.

The conquest of the Havannah, soon after that of Martinico and Guadaloupe, brought on a treaty between the contending powers in Europe; and the news of preliminaries being signed reached Boston in January, 1763, and of the definitive treaty, in May following.

It was well known in America, that the people of England, as well as administration*, were divided upon the expediency of retaining Canada rather than the islands; and it was also known that the objection to Canada proceeded from an opinion, that the cession of it by France would cause, in time, a separation of the British colonies from the mother country. This jealousy in England being known, it was of itself sufficient to set enterprising men upon considering how far such a separation was expedient and practicable. But the general joy in America upon the news of this cession was not caused by such views. And we may well infer from the

But, about the same time, the price of silver bullion in England fell to 5s. 3d. or 5s. 2d. the ounce, and there was no longer any profit by the exportation of silver rather than gold.

* It is probable that the last ministry was in doubt what would be most expedient. The late lord chancellor Hardwicke, as I have been informed from good authority, though he had then no ostensibly active share in administration, was much consulted, and inclined to take the West India islands rather than Canada, but commercial considerations governed him, without any apparent fears of the consequences which have followed the cession of Canada.

addresses

addresses of the two houses upon this occasion, 1768 that they could have no such thoughts. The governor in his speech congratulated them upon so joyful an event. In their address to him, they acknowledge, that the evident design of the French to surround the colonies was the immediate and just cause of the war; that, without the protection afforded them during the war, they must have been a prey to the power of France; that without the compensation made them by parliament, the burden of the expense of the war must have been insupportable.

In their address to the king they make the like acknowledgments, and, at the conclusion, promise to evidence their gratitude by every expression of duty and loyalty in their power.

Mr. Otis, at the first town meeting of Boston after the peace, having been chosen moderator, addressed himself to the inhabitants, in a speech which he caused to be printed in the newspapers, in the following words:—"We in America have certainly abundant reasons to rejoice. The heathen are not only driven out, but the Canadians, much more formidable enemies, are conquered and become fellow subjects. The British dominion and power may now be said, literally, to extend from sea to sea, and from the great river to the ends of the earth. And we may safely conclude from his majesty's wise administration hitherto, that liberty and knowledge, civil and religious, will be co-extended, improved, and preserved to the latest posterity. No other constitution of civil government has yet appeared in the world, so admirably adapted to these great purposes, as that of Great Britain. Every British subject in America is of common right, "by acts of parliament," and by the laws of God and nature, entitled to all the essential privileges of Britons. By particular charters there are peculiar

1768 peculiar privileges granted, as in justice they might and ought, in consideration of the arduous undertaking to begin so glorious an empire as British America is rising to. Those jealousies, that some weak, and wicked minds have endeavoured to infuse with regard to the colonies, had their birth in the blackness of darkness, and it is great pity they had not remained there for ever, The true interests of Great Britain and her plantations are mutual, and what God in his providence has united, let no man dare attempt to pull asunder."

The southern colonies were molested, all the summer after the peace, by inroads from the Indians, and many people were killed, and others carried into captivity from the frontiers. In the autumn, general Gage, who succeeded general Amherst in the command of the British forces, called upon the Massachusetts for assistance, in conjunction with the other New England colonies, in order to form an army early in the spring, to enter the enemy's country by the lakes, whilst another army from the southern colonies should enter it by the Ohio. But this application was coldly received by the assembly. In former wars, the province had defended its own frontiers without aid from the southern colonies. Before the assembly came to a determination, there was a prospect of a treaty with the Indians, and they gave this treaty as a reason for referring the matter to another session. A general accommodation soon followed.

There does not appear to have been any special cause of dissatisfaction with the administration of government, at this time, in Massachusetts Bay. There was no complaint of invasion upon any of the rights and liberties of the people. At all times, there are many out of place, who wish to be in. There were, indeed, great disturbances in England; but nothing had occurred there, which concerned the

the people of Massachusetts Bay. Mr. Wilkes, 1763 nevertheless, had his partisans in America, and the sound of "Wilkes and liberty" was heard in Boston, in proportion to the number of inhabitants, as much as in London. Men took sides in New England upon mere speculative points in government, when there was nothing in practice which could give any grounds for forming parties. The officers of the crown, and especially all officers of the customs, were considered as engaged in promoting measures, more restrictive of the natural rights and liberties of the people, "than the ends for which government was instituted made necessary." They had the law, however, on their side. Squibs were thrown at their general characters, in newspapers, hand-bills, &c.

The terms, whig and tory, had never been much used in America. The Massachusetts people, in general, were of the principles of the ancient whigs; attached to the revolution, and to the succession of the crown in the house of Hanover. A very few, who might have been called tories in England, took the name of jacobites in America.

All on a sudden, the officers of the crown, and such as were for keeping up their authority, were branded with the name of tories, always the term of reproach; their opposers assuming the name of whigs, because the common people, as far as they had been acquainted with the parties in England, all supposed the whigs to have been in the right, and the tories in the wrong.

Whilst the people in the province were thus disposed to engage in parties, the state of the colonies became a matter of more serious consideration in England, than it had ever been before. The amazing increase of the national debt, by a war engaged in at the solicitations, and for the protection of the
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1763 the colonies, seems to have caused this new attention*.

▷ The first proof of it towards Massachusetts Bay was an order to the governor, to obtain a more exact and certain knowledge, than had ever been obtained, of the number of inhabitants, distinguishing age, sex, &c.

This the governor could not obtain without the aid of the assembly, by a law to compel the several towns and districts to make return of their numbers. Objections were made to it. Some suspected that it was required for purposes, though they could not discover them, to the disadvantage of the province; others, and not a few, seemed to have religious scruples, and compared it to David's numbering the people. The proposal was referred from one session to another, and, though it was finally agreed to by a majority, yet many remained dissatisfied.

1764 About the same time, the province agent in England† signified to the assembly, that, as the act of parliament

* The town of Boston chose for one of their representatives for the year 1763, Mr. Oxenbridge Thacher, a practising lawyer, who had been considered as on the side of government until a short time before this election, when he appeared in favour of liberty. Death is the common enemy of patriots and courtiers, and, in about two years, frustrated the expectations which many had formed of long-continued benefit from his talents in supporting the side of liberty, from the zeal with which he engaged.

Under the first charter, appeals lay from the courts of judicature to the general assembly, for which reason no practising lawyers were allowed to sit. I do not recollect that the town of Boston ever chose a lawyer to represent it under the second charter, until the year 1738; when Mr. John Read was chosen, but he was left out the next year; and in 1758 and 59, Mr. Benjamin Pratt was member for the town. These were men of the first character in their profession. Lawyers have ever since taken the lead, and been much employed in the public measures of this, and of the other colonies, and of the continental congresses.

† There had been a great division in the assembly about a proper person for agent in England. At length the majority agreed upon Jasper

parliament of the 6th of George II., commonly called 1764 the sugar act, would expire that year, it would undoubtedly be revived with alterations; that the duty on sugar and molasses would probably be reduced; and that more effectual provision would be made to enforce the payment. In the session* next after this advice, a letter was prepared to the agent, which contained a representation of the state of the trade between the northern colonies and the French sugar islands, and the benefit which must be derived from the increase of this trade, not only to the colonies, but to Great Britain. It must follow, that the trade ought not to be checked by duties, but left free, if not encouraged. The authority of parliament to impose the duty was not denied. But not contented with this representation, it was

Jasper Mauduit, esq., known to the principal members, as treasurer to the society for propagating the gospel among the Indians in New England and parts adjacent, and in esteem for his great integrity. It afterwards appeared that the business of the agency was managed by his brother, Israel Mauduit, esq., a gentleman of superior talents; and the house being sensible of it, passed a vote appointing him agent for the province in the room of his brother, who had expressed his desire that such a change should be made; and a majority of the council was disposed to a concurrence, but governor Bernard, having a desire to introduce another person, which it would be less easy to effect after the establishment of a gentleman of Mr. Israel Mauduit's character, prevailed with the council to non-concur the vote; and Mr. Jasper Mauduit continued at this time the agent.

* This session began at Boston, December 21st, 1763, but the small pox beginning to spread in the town, the governor, at the request of the house, adjourned the court from Boston to Cambridge. The night after the 24th of January, the building called the old college was entirely consumed by fire, which began in the library, the room where the council had sat the evening before. A very large collection of books, but the greatest part of them not very valuable, together with the apparatus for the use of the professor of natural and experimental philosophy, were wholly lost. A much better building was erected at the charge of the province, planned by the governor, who was a very ingenious architect, and a much more valuable library and apparatus were supplied by publick and private donations.

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1764 soon after thought necessary to send from the province a person well acquainted with the affairs of it, as a special agent upon this occasion, and Mr. Hutchinson, the lieutenant-governor, was elected by a very general vote of both houses. The governor did not choose to withhold his assent, but expressed his doubts to the lieutenant-governor of the expediency of his going to England without the special leave of the king. This, together with the inconvenience which a sudden departure must occasion in his private affairs, caused the lieutenant-governor to desire to be excused, unless his voyage might be deferred for three or four months, by which time he hoped the present obstructions would be removed.

Mr. Thacher, one of the members for Boston, was absent at the election, but was greatly dissatisfied with it. Being present when the answer was considered, he found fault with the choice, as having a dangerous tendency to the liberties of the people, not only as the lieutenant-governor was the officer of the crown, and improper to be at the same time the agent for the people, but also as he was known to have always been, in principle, a favourer of the prerogative.

This gave such a turn to the house, that, although all the members of both council and house, eight excepted, had given their votes for the lieutenant-governor upon the election, thirty-three in the house alone, when sixty-three were present, voted to excuse him from the service. A majority of the council continued in favour of his proceeding, and non-concurred the vote of the house; but as the house declined joining in instructions, which it was necessary should be given, the affair was laid aside for that session. Before the next session, which was in May 1764, advice was received that the proposed bill had passed the house of commons, and that new duties were imposed, in this bill, on articles not charged with

with duties by the former act. Upon this occasion, 1764 exception was taken against taxes by parliament, as being incompatible with the rights of the people, unless represented. Mr. Otis wrote a pamphlet, which was printed in the beginning of 1764, upon the same subject. The town of Boston was convened, soon after, for the choice of representatives. The instructions given to them by the town contain the sentiments in the pamphlet. As it was supposed that the bill had passed into an act, they require their members, in such case, to promote in the house an application for a repeal; "for if our trade may be taxed, why not our lands?—why not the produce of our lands, and every thing we possess or make use of? This, we apprehend, annihilates our charter rights to *govern* and *tax* ourselves. It strikes at our British privileges, which, as we have never forfeited them, we hold in common with our fellow subjects who are natives of Britain. If taxes are laid upon us in any shape, *without our having a legal representative when they are made*, are we not reduced from the character of free subjects to the miserable state of tributary slaves?"

The representatives are then required to endeavour to obtain instructions to the agent, that, "while he is setting forth the unshaken loyalty of the province, its *acknowledged* dependence on, and subordination to Great Britain, and the ready submission of its merchants to all *just* and *necessary* regulations of trade, he may be able, in the most humble and pressing manner, to remonstrate for us all those rights and privileges which justly belong to us either by charter or birth*." Mr. Otis in his book † acknow-

* Instructions printed in the Boston newspaper, May 31st, 1764.

† When the parliament shall think fit to allow the colonists a representation in the house of commons, the equity of their taxing the colonists will be as clear as their power is at present of doing it if they please. — *Rights of the British Colonies*, p. 59.

ledges

1764 ledges, in the most express terms, the authority of parliament in taxes, as well as all other parts of legislation, and seems to consider the colonies under the same hardship with the county of Durham before the reign of king Charles II., subject to the burden of taxes, but debarred from the privilege of representatives in parliament; and these instructions, which probably were the composition of the same person, leave room for the same expedient. It appears that, early in the session, the secretary and speaker had received letters from Mr. Mauduit, the agent in England, with the sugar act completed, which was now made a perpetual act. The duty on molasses was reduced from sixpence to three-pence per gallon. New duties were laid on coffee, pimento, East India goods, and wines from Madeira and the Western islands.

It was very bad policy to keep the duty on molasses so high. Had it been then reduced to a penny, or three-halfpence, it would have been acquiesced in by the merchants. The reduction of the duty was originally the suggestion of the merchants, who wished to pay a small duty, rather than be at the charge and trouble of clandestinely importing foreign molasses: for the sixpence duty had all the effect of a prohibition. This desire of the merchants being made known to Mr. Bollan, at that time agent, he proposed to the minister, about seven years before this act, to reduce the duty to three-pence, which he presumed his principals would cheerfully pay. The proposal was well received by ministry, and, in a letter to the assembly, the agent recommended to them to make application for this reduction. A large committee of the council and house was appointed to consider of the proposal, and, except the lieutenant-governor, who was the chairman, had unanimously given their voices in favour of it. Upon his observing to them the danger of a precedent, in

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a case of this nature, the committee changed their 1764 opinion, and reported, that it was not advisable to apply for the reduction of the duty in order to the payment of it; but rather that the act, if it must be revived, should be revived as it had always stood, and be considered as a prohibition. This stopped any further proceedings, at that time, in favour of the reduction.

When the new act was carried into execution, by connivance or indulgence in the officers, the duty paid on molasses seldom exceeded three-halfpence per gallon; and, if other acts had not been proposed, this alone would not have caused that general disquiet which came on soon after, and which took its rise from information given by the agent of a determination in the minister to raise, by a stamp duty, or in some other way, a sum from America, sufficient to ease government, in part, from the future charges which might be necessary there. This project, he wrote, would have been carried through parliament the last session, if it had not been thought advisable by Mr. Grenville, that the assemblies in the colonies should have notice of the intention, and an opportunity of proposing another mode of contributing to this charge, if any other should be more agreeable to them.

Although the province agents received their power from the joint voice of the council and house of representatives, consented to by the governor, it had been the practice for forty years past, in their correspondence, to send duplicates of letters, one directed to the secretary for the use of the council, the other to the speaker for the use of the house. Instructions to the agents, in all matters which concerned the general interests of the province, were, nevertheless, always the joint act of council and house. Upon this occasion, the house, by a committee of their own members only, took the subject matter

1764 matter of this letter of the agent into their separate and distinct consideration, referring the book published by Mr. Otis to the same committee; and, on the 13th of June, the committee reported a letter to the agent, which was made the act of the house, and ordered to be transmitted. A statement of the rights of the British colonies, prepared by Mr. Otis, was ordered to be sent with the letter, and the agent was to be informed that it was drawn up by one of the house, and he was directed to make the best use of it in his power. At the same time, Mr. Otis and others were appointed a committee of the house, to communicate the instructions given to the agent in this letter for the purpose of obtaining the repeal of the sugar act, and preventing a stamp act or any other impositions and taxes upon America, to the several assemblies on the continent, and to desire them to join in the same measures.

This seems to have been the first instance of any act of the house of representatives, separate from the other branches, in any matter of importance, which had respect to the whole province. It could not have escaped the knowledge of the council, though no notice is taken, as is usual in all other cases, in the printed journal of the house, of the appointment of a committee. The next day after it had passed the house, the governor, in a message to both houses, informed them that he did not intend any other session before winter, and recommended acting upon all necessary business of the province at that time. In the winter session it would be too late to give an answer to Mr. Grenville's proposal. Although it was known that the house had voted that a letter should be sent to the agent, the contents of it were not made publick. The council, therefore, properly enough, appointed a committee, to join with a committee of the house, in taking the letters from the agent under consideration, and preparing

paring an answer to them. The house refused to 1764 join, without assigning any reason for the refusal, and the next day the governor put an end to the session. As soon as the journal of the house could be printed, the letter from the house appeared as part of it; and probably the printed letter was in England as soon as that which was written, and sealed up that it might not be exposed to publick view. There had rarely, perhaps never, been an instance of their printing a letter to the agent. The whole proceeding was out of course. In former times the council would not have suffered the house of representatives to direct the province agent, without a loud remonstrance against the proceeding. In the letter, complaint is made of the sugar act. "The silence of the province," *they say*, "should have been imputed to any cause, even to despair, rather than be construed into a tacit cession of their rights, or an acknowledgment of a right in the parliament of Great Britain to impose duties and taxes upon a people *who are not represented in the house of commons*. The *kind offer* of suspending the stamp duty, in the manner, and upon the condition mentioned, amounts to no more than this, that if the colonies will not tax themselves, as they may be directed, the parliament will tax them."

The merits of the province in supporting their own government through many expensive wars, and the great exertions during the last war, are set forth in the letter, as also the debt remaining upon the province, and the establishments which were continued as a defence against the Indians, to shew it not to be equitable to pay taxes for the support of regular forces, &c.; and, to all this they add, "granting the time may come, which we hope is far off, when the British parliament shall think fit to oblige the
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1764 the North Americans, not only to maintain civil government among themselves, for this they have already done, but to support an army to protect them, can it be possible that the duties to be imposed and the taxes to be levied *shall be assessed without the voice of an American parliament?* If all colonists are to be taxed at pleasure, *without any representative in parliament*, what will there be to distinguish them, in point of liberty, from the subjects of the most absolute prince? “*If we are not represented, we are slaves.*”

This letter, together with Mr. Otis's book, which accompanied it, and was reprinted in England, tended to raise an opinion, that a representation of the colonies in parliament would be acceptable, and produce a quiet submission to its authority. Many persons, and it is said Mr. Grenville was one of them, were disposed to adopt the measure; and it would probably have come under consideration, if the colonies themselves had not soon after declared against it.

In the whole of this business, the members of the house were much influenced by Mr. Otis.

When the people had considered it, and also knew that the governor had signified his resolution, not to meet the assembly again until winter, they were dissatisfied. The members for Boston could not help seeing that a clamour would be raised against them, if the agent should not be regularly instructed in so important a matter, until it was too late. They would be charged with refusing to join with the council in the last session. They joined, therefore, with several members of the council, in an application to the governor to convene the assembly for this special purpose.

The governor complied with their request, and in
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his speech at opening the session*, briefly intimated 1764 to them the reason of his meeting them contrary to his intention, and recommended *unity*, prudence, and moderation.

In the last session, the house had appointed a committee of their members to correspond with the other colonies, "upon measures which concerned their common interest." As soon as the assembly met, it appeared that Mr. Thacher, one of this committee, and one of the representatives of Boston, was furnished with an address to the king, lords, and commons, in substance conformable to the instructions of the town of Boston.

This was offered to a committee of the house, and, without material alterations, accepted, and sent to the council for concurrence.

The council refused a concurrence, and appointed a committee to join with a committee of the house in preparing an address upon the same subject.

This vote of council was nonconcurrent. A conference between the two houses ensued upon the subject matter of the address, as well as the mode of proceeding. The result was the appointment of a large committee of both houses. They soon agreed to address the house of commons only. Many days, however, were spent by the committee without agreeing upon a report. A variety of addresses, prepared by different members, had been rejected. At length, one which was offered by the chairman, the lieutenant-governor, had the good fortune to be accepted without a dissenting voice. Notwithstanding this unanimity, Mr. Thacher, and some other persons of the committee, opposed the acceptance, when it was ~~reported~~ reported to the house†; and procured amendments

OR

* October 18th, 1764.

† It was a rule in joint committees, when the subject of consideration related to taxes, for the chairman to offer the report in council, where it was read, and sent down to the house to originate a

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vote

1764 or alterations, which, upon being sent to the council, were rejected. Some days passed in controversy between the two houses, when the difference, at length, was reduced to one word only; which, as it stood in the report, was *privileges*. The house had changed it to *rights*, which the council would not agree to. At length, *liberties* was proposed by the council, and acquiesced in by the house. The opposers of the address in the house laboured for the assertion of an exclusive *right* in the assemblies of the colonies, to impose taxes and duties on the inhabitants in all cases whatever. The council supposed such an address would never be received by the house of commons, and, therefore, thought it more prudent to consider the exemption from taxes as an indulgence, which parliament had always shewn to the colonies, in leaving to the respective legislatures those powers which, otherwise, would have been exercised by parliament.

Thus they had enjoyed the liberties and privileges which English subjects claim, of being taxed by their representatives, but not as a right which exempted them from the authority of parliament, when it should think necessary to exercise it.

This address, or petition, arrived in England in season, but was never presented in form. The petitions from the other colonies were deemed inadmissible, because they denied the authority of parliament. That objection could not be made to this petition. The governor, at the request of the council and house, sent a copy of it to the secretary of state, to be laid before the king in council, and it was said to have been favourably received. It was afterwards laid before the house of commons, and there read,

vote. In all other cases the council originated a vote upon the report, and sent the vote to the house, with the report, for concurrence.

with

with other papers from the secretary's office, relative 1764 to the colonies; and the governor, in a message to the council and house, acquainted them, that he had received advice of its having been of real use, in promoting the repeal of the stamp act, though it could not be presented at the time that act passed.

This affair being finished, an address to the governor was prepared by another committee, in which the two houses complain, that the late act of parliament affects their "civil rights," as well as commercial interests, and deprives them of "privileges" which their fellow subjects in England enjoy; but this was not opposed in council, being qualified with an acknowledgment, that it is their "duty to yield obedience to it while it continues unrepealed."

The business for which the court was convened being completed, it was prorogued. A few days after, a gentleman*, belonging to New York assembly, came to Boston with the copy of a petition to the house of commons, conceived in a much higher strain than the greatest advocates for the rights of the people had ever proposed in Massachusetts Bay. A committee from Rhode Island came, at the same time, to desire a copy of the Massachusetts petition, and gave the preference to the petition from New York. An address from Rhode Island to the king, a memorial to the house of lords, and a remonstrance to the house of commons, were published not long after, conceived in a still higher strain than the address of New York. Such as had been for stronger expressions in the Massachusetts petition, applauded the spirit which appeared in those of other colonies, which, if it had been known sooner, would have had some effect, but it was then too late†.

A

* William Bayard, esq.

† I have related this transaction more circumstantially than otherwise I should have done, because it shews, on the one hand, the

1765 A session of the assembly began in January 1765, when nothing was transacted which deserved notice, respecting this important controversy. It was feared that the stamp act would pass; but there were silent hopes, that, in some way or other unforeseen, it might be diverted. Many members of the house of commons, in the last session of parliament, had declared against the stamp duty, while it was mere matter of conversation. The general dissatisfaction in the colonies, it was hoped, might increase the number. It would have had that effect, if the other colonies had gone no greater length than Massachusetts. But the doctrine of exemption from the authority of parliament was alarming in England. Every man who was governed by reason saw, that, if it was conceded as a matter of right in one instance, it would soon be claimed in all others. The colonies put it out of the power of their friends to serve them, and, perhaps, there was not one member of the house of commons, when this doctrine was first started, who would have appeared in favour of it. The number was small of those who were against the tax for any other reasons, being only 49 in 294, when the bill was brought into the house. This was known in Boston in the month of April, and there were no longer any hopes of its being rejected.

Upon the news of the intention to lay this duty on the colonies, many people, the last year, had associated, and engaged to forbear the importation, or consumption, of English goods; and particularly to break off from the custom of wearing black clothes, or other mourning*, upon the death of relations.

endeavours of a small party only, to increase the breach between parliament and the colonies, and, on the other hand, the disposition of a much superior party to promote such measures as tended to heal the breach, and to restore and preserve the union of the several parts of the empire.

* It being generally of British manufacture.

This

This agreement was then signed by some of the 1765 council, and representatives, and by great numbers of people in the town of Boston, and the disuse of mourning soon became general. This was intended to alarm the manufacturers in England. And now, an agreement was made, and signed by a great proportion of the inhabitants of Boston, to eat no lamb during the year. This was in order to increase the growth, and, of course, the manufacture of wool in the province. Neither of these measures much served the purpose for which they were professedly intended, but they served to unite the people in an unfavourable opinion of parliament, as being biassed by the immediate interest of the kingdom, separate and distinct from the interest of the colonies. Such a bias, they were taught, rendered it improper that the parliament should be the common legislature of both: and the advocates for its authority began to lose the favour of the people.

Before the election of councillors in May, it was known that the bill had passed into an act, and was to take place the 1st of November. It was reported, and believed, that the friends of the secretary, Mr. Oliver, who was one of the council, had solicited for him, at his request, the place of distributor of the stamps. This alone, for no man's general character stood better, caused such opposition to his election, that it was carried by three or four votes only.

The governor, in his speech to the assembly, observed, that, "in an empire, extended and diversified as that of Great Britain, there must be a supreme legislature, to which all other powers must be subordinate. It is our happiness that our supreme legislature is the sanctuary of liberty and justice, and that the prince who presides over it, realizes the idea of a patriot king. Surely, then, we should submit our opinions to the determinations of
so

1765 so august a body, and acquiesce, in a perfect confidence that the rights of the members of the British empire will ever be safe in the hands of the conservators of the liberties of the whole."

The house thought it a time for action, rather than speculation; and, contrary to usual practice, suffered the speech to pass without any address, or notice of any sort. The governor, in return, at the close of the session, made no speech, as he, and his predecessors, used to do. Instead of an answer to the governor from a Massachusetts house of representatives, it was thought advisable to lay a foundation for the concord and union of all the assemblies on the continent, in an opposition to the measures of parliament. Letters were sent, in the name of the house, to every assembly as far as South Carolina, proposing a meeting of committees or delegates, "to consult together on the present circumstances of the colonies, and the difficulties to which they are and must be reduced, by the operations of the acts of parliament for laying duties and taxes on the colonies; and to consider of a general, and united, dutiful, loyal, and humble representation of their condition to his majesty, and the parliament; and to implore relief." It was proposed to hold the meeting at New York, the first Tuesday in October*. There never had been an instance of a convention of committees from the assemblies of the colonies. There is nothing in any charter, or in

* The delegates from Massachusetts Bay were James Otis, Oliver Partridge, and Timothy Ruggles. The two last named had the character of friends to government. Mr. Ruggles accepted the trust, expecting nothing would be required of him that was not expressed in the vote of the assembly; and left the house in order to prepare for his journey. He was afterwards informed that the house had passed a set of instructions to their delegates, in which they were required to insist upon an exclusive right in the colonies to all acts of taxation. He determined, thereupon, to excuse himself from serving, but, being urged by his friends, he changed his mind, and went on to New York.

any

any commission, from the crown, which authorized 1765 ✓
such a convention.

A proposal had been made, above forty years before, by a Massachusetts assembly, for a like convention, not out of opposition to parliament or any measures in England; but, before answers were then given by the other assemblies, the proposal was known in England, and Mr. Dummer, the agent, wrote to his constituents, that colonel Bladen had said to him, at the board of trade, "it was a mutinous" proposal, and he advised not to prosecute it. It did not go on. This second attempt, though for a different purpose, succeeded, without any mark of disapprobation from authority in England. The council concurred with, and the governor consented to, a grant made by the house, of four hundred and fifty pounds, to defray the charges of the delegates.

There appeared to be a general determination, among the people, to prevent the execution of the stamp act, if possible; but there did not appear to be any plan concerted. Most people of judgment thought that it would force its way; but it did not.

The first act of any of the assemblies, against the authority of the act of parliament, was in Virginia. These resolves* were expressed in such terms that many people, upon the first surprise, pronounced them treasonable†. But the astonishment was of no long duration. The newspapers soon vindicated the resolves. From having been censured, the spirit discovered in them was applauded, as worthy of imitation; and the declaration in them, that all who maintained the right of parliament should be deemed enemies to the colony, had a tendency to bring on those acts of violence which soon after were committed in Boston.

* Appendix, B.

† Particularly Mr. Otis, one of the representatives of Boston, in the hearing of many persons in King street.

The

1765 The distributor of stamps for the colony of Connecticut* arrived in Boston from London; and, having been agent for that colony, and in other respects of a very reputable character, received from many gentlemen of the town such civilities as were due to him. When he set out for Connecticut, Mr. Oliver, the distributor for Massachusetts Bay, accompanied him out of town. This occasioned murmuring among the people, and an inflammatory piece in the next Boston Gazette. A few days after, early in the morning, a stuffed image was hung upon a tree, called the great tree of the south part of Boston. Labels affixed denoted it to be designed for the distributor of stamps. People, who were passing by, stopped to view it, and the report caused others to gather from all quarters of the town, and many from the towns adjacent. The governor caused the council to be convened. Before they came to any determination, the sheriff, with his deputies, had been to the place, but, by advice of some of the graver persons present, forbore any attempt to remove the image. The majority of the council, but not the whole, advised not to meddle with it; and urged as a reason, that the people were orderly, and, if left alone, would take down the image, and bury it without any disturbance; but an attempt to remove it would bring on a riot, the mischief designed to be prevented.

The governor, however, thought fit to meet the council again in the afternoon. Before night, the image was taken down, and carried through the townhouse, in the chamber whereof the governor and council were sitting. Forty or fifty tradesmen, decently dressed, preceded; and some thousands of the mob followed down King street to Oliver's dock, near which Mr. Oliver had lately erected a

* Jared Ingersoll, esq.

building, which, it was conjectured, he designed for 1765 a stamp office. This was laid flat to the ground in a few minutes. From thence the mob proceeded for Fort Hill, but Mr. Oliver's house being in the way, they endeavoured to force themselves into it, and being opposed, broke the windows, beat down the doors, entered, and destroyed part of his furniture, and continued in riot until midnight, before they separated.

The next day, the governor, by advice of council, issued a proclamation, offering a reward for discovering offenders, &c. Many of the offenders were known, and the proclamation was considered as a mere matter of form. Some of the council advised to a military watch in the town the next night, but a majority were against it, and thought it enough to recommend to the select men and justices, to increase the number of the ordinary town watch; but even this was not done. Several of the council gave it as their opinion, Mr. Oliver being present, that the people, not only of the town of Boston, but of the country in general, would never submit to the execution of the stamp act, let the consequence of an opposition to it be what it would. It was also reported, that the people of Connecticut had threatened to hang their distributor on the first tree after he entered the colony; and that, to avoid it, he had turned aside to Rhode Island.

Despairing of protection, and finding his family in terror and great distress, Mr. Oliver came to a sudden resolution to resign his office before another night, and immediately signified, by a writing under his hand, to one of his friends, that he would send letters, by a ship then ready to sail for London, which should contain such resignation; and he desired that the town might be made acquainted with it, and with the strong assurances he had given, that he would never act in that capacity.

The

1765 This victory was matter of triumph. The mob assembled in the evening; not to insult the distributor, but to give him thanks, and to make a bonfire upon the hill near his house.

It was hoped that the people, having obtained all that they desired, would return to order, but, having repeatedly assembled with impunity, a very small pretence served to induce them to re-assemble.

The next evening, the mob surrounded the house of the lieutenant-governor and chief justice. He was at Mr. Oliver's house when it was assaulted, and had excited the sheriff, and the colonel of the regiment, to attempt to suppress the mob. A report was soon spread, that he was a favourer of the stamp act, and had encouraged it by letters to the ministry. Upon notice of the approach of the people, he caused the doors and windows to be barred; and remained in the house. After attempting to enter, they called upon him to come into the balcony, and to declare that he had not written in favour of the act, and they would retire quite satisfied. This was an indignity to which he would not submit; and, therefore, he made no answer. An ancient reputable tradesman obtained their attention, and endeavoured to persuade them, not only of the unwarrantableness of their proceedings, but of the groundlessness of their suspicions of the lieutenant-governor, who might well enough wish the act of parliament had not passed, though he disapproved of the violent opposition to its execution. Some were for withdrawing, and others for continuing; when one of the neighbours called to them from his window and affirmed, that he saw the lieutenant-governor in his carriage, just before night, and that he was gone to lodge at his house in the country. Upon this, they dispersed, with only breaking some of the glass.

These attacks upon two of the principal officers of the crown struck terror into people of inferior rank;

rank ; and though they saw the danger from this 1765 assumed power in the populace, yet they would give no aid in discountenancing it, lest they should become obnoxious themselves ; for there were whisperings of danger from further acts of violence. On Sunday the 25th of August, a sermon was preached, in what was called the West meeting-house, from these words, "I would they were even cut off which trouble you*." The text alone, without a comment †, delivered from the pulpit at that time, might be construed by some of the auditory into an approbation of the prevailing irregularities. One, who had a chief hand in the outrages which soon followed, declared, when he was in prison, that he was excited to them by this sermon ‡, and that he thought he was doing God service.

Certain depositions had been taken, many months before these transactions, by order of the governor, concerning the illicit trade carrying on ; and one of them, made by the judge of the admiralty, had, at the special desire of the governor, been sworn to before the lieutenant-governor, as chief justice. They had been shewn, at one of the offices in England, to a person who arrived in Boston just at this time, and he had acquainted several merchants, whose names were in some of the depositions as smugglers, with the contents. This brought, though without reason, the resentment of the merchants

* Gal. chap. v. ver. 12.

† The verse which follows, "For, brethren, ye have been called unto liberty only ; use not liberty for an occasion to the flesh," if properly enforced, would have been sufficient to have kept the people within bounds.

‡ Dr. Mayhew, the preacher, in a letter to the lieutenant-governor, a few days after, expressed the greatest concern, nothing being further from his thoughts than such an effect ; and declared, that, if the loss of his whole estate could recall the sermon, he would willingly part with it.

against

1765 against the persons who, by their office, were obliged to administer the oaths, as well as against the officers of the customs and admiralty, who had made the depositions; and the leaders of the mob contrived a riot, which, after some small efforts against such officers, was to spend its principal force upon the lieutenant-governor.

And, in the evening of the 26th of August, such a mob was collected in King street, drawn there by a bonfire, and well supplied with strong drink. After some annoyance to the house of the registrar of the admiralty, and somewhat greater to that of the comptroller of the customs, whose cellars they plundered of the wine and spirits in them, they came, with intoxicated rage, upon the house of the lieutenant-governor. The doors were immediately split to pieces with broad axes, and a way made there, and at the windows, for the entry of the mob; which poured in, and filled, in an instant, every room in the house.

The lieutenant-governor had very short notice of the approach of the mob. He directed his children, and the rest of his family, to leave the house immediately, determining to keep possession himself. His eldest daughter, after going a little way from the house, returned, and refused to quit it, unless her father would do the like.

This caused him to depart from his resolution, a few minutes before the mob entered. They continued their possession until daylight; destroyed, carried away, or cast into the street, every thing that was in the house; demolished every part of it, except the walls, as far as lay in their power; and had begun to break away the brick-work.

The damage was estimated at about twenty-five hundred pounds sterling, without any regard to a great

great collection of publick as well as private papers, 1765 in the possession and custody of the lieutenant-governor.

The town was, the whole night, under the awe of this mob ; many of the magistrates, with the field officers of the militia, standing by as spectators ; and no body daring to oppose, or contradict *.

The governor was at the castle, and knew nothing of what had happened until the next morning. He then went to town, and caused a council to be summoned. Before they could meet, the inhabitants of Boston assembled in Faneuil Hall ; and, in as full a meeting as had been known, by an unanimous vote, declared an utter detestation of the extraordinary and violent proceedings of a number of persons unknown, against some of the inhabitants of the town, the preceding night ; and desired the select men, and magistrates of the town, to use their utmost endeavours to suppress the like disorders for the future ; the freeholders, and other inhabitants, being ready to do every thing in their power to assist them. It could not be doubted, that many of those who were immediate actors in, as well as of those who had been abettors of, those violent proceedings, were present at this unanimous vote.

The council advised to a proclamation, with promise of 300*l.* reward for discovering the leader or leaders, and 100*l.* for every other person. Information had been before given to the justices of peace in the town, and warrants had been issued and delivered to the sheriff for apprehending several per-

* The lieutenant-colonel of the regiment, observing two men disguised, with long staves in their hands, who seemed to be directors, expressed his concern at the damage other people, besides the lieutenant-governor, might sustain by the destruction of so many papers. Answer was made, that it had been resolved to destroy every thing in the house ; and such resolve should be carried to effect.

1765 sons. One of them, a tradesman of the town, whose name was Mackintosh, was soon taken in King street ; but the sheriff was immediately surrounded by a number of merchants, and other persons of property and character, who assured him, that, if he apprehended Mackintosh, not a man would appear in arms, as had been proposed, for the security of the town the next night. The sheriff released him, and made return of his doings to the governor, then in council. Some of the council gave their opinion, that the sheriff was inexcusable ; but it passed over without any act of council to shew a disapprobation. To this feeble state were the powers of government reduced*.

Six or eight other persons were apprehended, and, upon examination, committed to prison in order to trial, and were generally considered as capital offenders. Before the time of trial, a considerable number of people entered the house of the prison-keeper late in the evening, compelled him, by threats, to deliver to them the keys of the prison, which they opened, and then set the prisoners at liberty ; and all this without any tumult. The prisoners thought fit to disappear for some months ; but there was no authority, which thought it advisable to make any inquiry after them.

The next day after the riot, happened to be the first day of the superior court for the county of Suffolk. The four judges attended in their robes ; the lieutenant-governor as chief-justice, in an ordinary undress, in which he was sitting in the evening when the alarm was given him ; his robes and every

* The justices of peace being ordered to attend the governor and council, one, who had been most active in town meetings, &c., complained that his own life had been threatened, and wept. The governor observed to him, that he had raised the devil, and could not lay him again.

other

other garment being taken out of his house, or de- 1765
stroyed in it. Instead of a charge to the grand jury,
the chief-justice, in a long speech to the people,
endeavoured to convince them of the fatal effects to
the province of the violent opposition to government
which was beginning to take place; and the court
shewed their resentment by refusing to do any busi-
ness while the town was in that disorderly state,
and adjourned for six weeks*.

Many of the most ruffian part of the mob, who
left the town the next day after the riot, returned
in the evening, and attempted again to collect the
people together, in order to further rapine; but a
military watch having been ordered, and the go-
vernor's company of cadets appearing in arms, and
shewing great spirit, the mob was dispersed. People
came in from many parts of the country, to view
the ruins of the lieutenant-governor's house, out-
houses, garden, &c., and, from the shocking appear-
ance, could not help expressing a disapprobation of
such acts of violence. Their prejudices, however,
were not abated against the stamp act. The exe-
cution of it must be hindered in some other way.

The officer appointed to receive the stamped
paper, which was daily expected, having resigned
his office, the governor determined to receive the
paper into his own charge at the castle; and, by
advice of council, he ordered the enlistment of a
number of men to strengthen the garrison. This
caused great murmur among the people. To pacify
them, he made a declaration in council, that he had
no authority to open any of the packages, or to

* In the counties distant from the town of Boston, this violence
was at first generally condemned. The superior court was held a
few weeks after in Worcester, and then in Hampshire. In each
county, the grand jury addressed the chief justice, and declared, not
as their own minds only, but what they knew to be the minds of the
people in general, a detestation of the proceedings in Boston.

appoint

1765 appoint a distributor of stamps; that his views, in depositing the stamped paper in the castle, and in strengthening the garrison there, were to prevent imprudent people from offering an insult to the king; and to save the town, or province, as it might happen, from being held to answer for the value of the stamps, as they certainly would be, if the papers should be taken away. This declaration the council desired him to publish; but it did not stop the clamour. He was forced to stop the enlistment, and to discharge such men as had been enlisted.

The news of the change of ministry in England, which arrived about this time*, tended more to peace and quiet, at least for a time, than any thing in the power of the governor, or of any authority within the province, could have done. Hopes were immediately conceived that the stamp act would be repealed the next session. It certainly was more likely that a new ministry should be in favour of repealing acts brought forward by the old, than that the old should be inclined to the repeal of their own acts.

The hopes of this repeal were increased by the news, day after day, of the same spirit of opposition to the act in many other colonies, as had shewn itself in Massachusetts Bay. The distributors were compelled to resign in every colony. Mobs became frequent in Connecticut, Rhode Island, and New York. Nothing more was judged necessary, at present, to effect it: but if it should not be repealed the next session, further measures must be then devised.

It was necessary, however, to determine how to proceed, after the 1st of November, until the repeal. It was the general voice, that, at all events, the act must not be executed. But it was not

† September 9th.

agreed

agreed, whether to use all papers, required to be stamped, without the stamps, in like manner as if the act had never been made ; or, to desist from all kinds of business, in which the use of the stamped papers would be necessary. There was great risk in the former way, as all processes in the law, all bonds, deeds, &c. would be considered as null and void, if the act should finally be enforced ; and all ships, which should go to any part of the English dominions, or be met with upon the seas by any of the king's ships, would be liable to be seized immediately. On the other hand, great numbers of people must be deprived of their support, if all the business in which stamps were required should be at a stand.

The assembly stood prorogued to the 25th of September. A further prorogation was intended, but this extraordinary state of things made a session necessary. The governor, in his speech the first day of the session, took notice of the late violences in the town of Boston, and of the open declarations of the people, that the stamp act should never be executed. He called upon the two houses, to join with him in aiding the executive powers of government ; to contradict such declarations, and to oppose the force by which they were to be supported. He observed, that a law might be inexpedient, and yet, it could not be denied, that parliament had authority to make the law. He, therefore, cautioned them against denying the right of parliament, lest they should thereby defeat the measures used to obtain a repeal. He set forth the very serious and alarming consequences of a refusal to submit to the act ; and added, that, probably, parliament would require submission to the act, as a preliminary to the repeal of it. He recommended a compensation to the sufferers from the late disturbances, as an act of justice, and advised them to make it, as of

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their

1765 their own accord, before any requisition should be laid upon them. After all, he concluded with acknowledging that they had a difficult part to act, and that it might not be sufficient for them to be convinced of the necessity of a submission to the law for the present, unless the same conviction should be extended to the people in general; and, therefore, he could only desire them to acquaint themselves well with the exigency of the present time, and, if they should be persuaded that disobeying the act would produce much more evil than submitting to it, that they would endeavour to bring their constituents to a like persuasion. If it should be necessary, he would give them a recess sufficient for the purpose. His speech, in general, was animated; but the conclusion was faint*.

The house soon discovered that they were not themselves convinced of the necessity of submitting to the act, and therefore would not ask for a recess to convince their constituents. But, as the judges of the superior court were absent in a remote county, the governor thought it advisable to give the assembly a recess for four or five weeks, without waiting for an answer to his speech†.

Some of the principal members of the house improved this time, in preparing a very long answer, to shew that obedience was not due to the act. Fourteen resolves were also prepared, in order to their being passed by the house, for the same purpose.

In this answer‡, they expressed their surprise at the adjournment of the assembly, immediately after they had been called together to determine what

* Appendix C.

† Upon the death of Mr. Thacher, one of the representatives of Boston, Mr. Samuel Adams was returned in his stead, and made his first appearance as a member at this session.

‡ Appendix D.

was proper at so difficult and dangerous a conjuncture*. They did not think the province in danger from any weakness in the executive power; nor could they imagine, that the governor meant to constitute any new and extraordinary power, by law, to oppose acts of violence which he might apprehend from a people ever remarkable for their loyalty and good order. They knew of no declarations made, "and subsisting," that the stamp act shall not be executed within the province. If individuals had declared that they were unwilling to subject themselves to the payment of stamp duties, and chose rather to lay aside all business than make use of the papers, the house was not accountable for such declarations, nor could they see any thing criminal in them. They would not presume to adjust the bounds of the authority of parliament; but bounds there were, undoubtedly, and, in particular, acts which had been found to infringe upon "*Magna Charta*" had always been repealed†. The governor had thought proper to enumerate the inconveniences which would arise from not making use of the stamped paper, but his love and concern for the province had led him to fear more than they themselves feared. They could not but be surprised at his intimating that parliament would require submission to an act, as a preliminary to their granting relief from the unconstitutional burden of it; which carried a suggestion, far from what he could design, of a wanton exercise of mere arbitrary power. They highly disapproved of the acts of violence which had been committed, but, till they should be convinced that a compensation to the sufferers would not encourage such outrages in

* He adjourned them to the 23rd of October. The 25th they presented this message. The 1st of November the stamp act was to take place.

† This was an assertion incapable of being proved.

1765 time to come, and till some good reason could be assigned why the losses sustained should be made good, more than other losses upon other occasions, they should not see their way clear to make such compensation. They knew not who had any right to require it of them. They could not conceive why it should be called an act of justice, unless a crime, committed by a few individuals, should be chargeable upon a whole community.

The resolves* were ordered by the house to be kept upon their records; "that a just sense of liberty, and the firm sentiments of loyalty, may be transmitted to posterity."

Besides asserting, what formerly had been asserted, that the right of being represented in the same body which exercises the power of making laws for levying taxes, is one of the main pillars of the British constitution, to which the subjects in the colonies are as fully entitled as those in the kingdom; they now assert, that such representation in the parliament of Great Britain, as the subjects there enjoy, is impracticable for the subjects in America; and that, in their opinion, the several subordinate powers of legislation in America were constituted upon the apprehensions of this impracticability; and, as a just conclusion, they resolve, that all acts made by any power whatever, other than the general assembly of the province, imposing taxes on the inhabitants, are infringements of their inherent and unalienable rights, as men and British subjects, and render void the most valuable declarations of their charter.

They conclude with a resolve, that the house owe the strictest allegiance to his most sacred majesty, king George the Third; that they have the greatest *veneration* for the parliament; and that they will exert

* Appendix E.

themselves

themselves to their utmost in supporting his majesty's 1765 authority in the province.

In these resolves, which seem to be designed as a sort of "Magna Charta," or rather a declaration of the fundamentals of the constitution, there is no acknowledgment of the authority of parliament in any case whatsoever. "Veneration" is said to be due to parliament. "Authority" is acknowledged in the king. The "authority" of parliament to make laws for taxing, is denied, for want of representation. Upon the same reason, all acts whatever might have been denied. These resolves were passed, when three-fourths of the members of the house were the same persons who had been members the last year. The house then declared it to be their duty to yield obedience, even to a tax act, until it should be repealed. Inconsistencies in the votes and proceedings of such bodies of men are common. The reason is obvious. The body is governed by a few of its members, sometimes by a single member.

Mr. Otis had been the composer of most of the messages, resolves, and other acts of the house of representatives for three or four years past. He always admitted the parliament of Great Britain to be the supreme legislature of the whole empire, and every act, made to respect all parts of the empire, to be equally obligatory upon every part, whether represented or not; but he insisted, that every part had a claim to representation, and that it was an unconstitutional exercise of the power of parliament, to tax any part, and, nevertheless, to deny it a share in the representation. Mr. Otis, during this session, was absent, attending the general congress at New York. Mr. Adams had for several years been an active man in the town of Boston, always on the side of liberty, and was the reputed author of many of the publications in favour of it. These resolves, and the answer to the governor's speech, carry the
marks

1765 marks of his compositions. They are agreeable to his professed principles, which he owned, without reserve, in private discourse, to be independency; and from time to time he made advances towards it in publick, as far as would serve the great purpose of attaining to it. To his influence may be attributed the great advance made in this session.

The declaration against representatives in parliament agreed also with the proceedings of the convention at New York, sitting at this time.

This convention framed a set of resolves, and published them to the world *, as setting forth the rights of the inhabitants of the colonies, and the relation in which they stood to the parliament of Great Britain. They claimed an exemption from all taxes, except by the legislature of each colony respectively, in which alone they can be represented. They acknowledged a subordination to parliament, but qualified it by the word *due*, which leaves it too indefinite to suggest any particular degree, or kind, of subordination which they might have in their minds. They agreed, also, upon an address to the king †, a memorial to the house of lords ‡, and a petition to the house of commons §, which they made to consist with their resolves.

From the moderate principles of the Massachusetts delegates, such as were friends to peace were not without hopes that the result might tend to promote it; but it had a contrary tendency. The people in the colonies were more confirmed in their opposition, and nothing was offered by this convention, which could be taken up by parliament, to reconcile the colonies, without endangering the whole of its authority. Some in England excepted to the convention itself, as an assembly unknown to, and unau-

* Appendix F.

† Appendix G.

‡ Appendix H.

§ Appendix I.

thorized

authorized by, any of the constitutions of the colonies. 1765
If this could have been connived at, yet the denial of the authority of parliament was deemed a sufficient bar to the memorial and petition, and they were not received.

Two of the delegates, Mr. Ruggles of Massachusetts Bay, who was their president, and Mr. Ogden of New Jersey, refused to sign the address, &c. with the rest. The former, upon his return home, was censured by the house of representatives, and the latter was hung in effigy by the people in New Jersey, and the image was cut down and burnt.

Nothing is more frequent, than for men, in the height of their struggles for liberty for themselves, to deny it to others.

It seemed to be the plan which most people approved of, that the execution of the stamp act should be prevented by a refusal to make use of any of the papers; and it was at first supposed, that there would be a cessation of all business in which such papers were required. The horror, from the riot of the 26th of August, had caused people of property, though as averse as any other persons to the execution of the stamp act, to declare against all violence. The first of November, however, it was judged proper should be distinguished. It had been suggested, that Mr. Huske, a native of New Hampshire, who had removed to London, and obtained a seat in parliament, first proposed to Mr. Grenville the stamp duty on the colonies. His effigy, therefore, together with Mr. Grenville's, was hung up on the tree which, by this time, had been named *liberty tree*, where they continued all day; the people of the town assembling under the tree, and passing to and from it until evening, when the images were cut down, and carried in a cart, thousands following them, to the town house, where the assembly was sitting, and from thence to the gallows, where, after hanging

1765 hanging some time, they were cut down, torn in pieces, and flung into the air; all to shew the detestation, which the people had, of the men whom the images were intended to represent. The town was quiet immediately after. The fifth of November also, which used frequently to be a day of high frolick and disorder, was this year remarkable for the peaceable, orderly behaviour of such as carried pageants about the streets.

The liberty party said, that the disposition of the body of the people was to be judged of from this orderly behaviour; and that the late violences proceeded from a few abandoned, desperate persons. The government party inferred, that this was an evidence of the influence the mob was under, and that they might be let loose, or kept up, just as their keepers thought fit.

An attempt was made to carry a vote through the assembly, declaring the necessity of going on with all business, as usual, without stamps. A committee of the two houses made their report to this purpose, that, the governor having acquainted them that the distributor of stamps had resigned, and that, nobody having any authority to distribute the stamped papers, or even to unpack them, they had been deposited in the castle*, to remain there, untouched, for his majesty's further orders; and, the act of parliament being deemed by the most sensible and judicious persons, and by all others, so grievous and unconstitutional, that it could not be supposed that any person would think it consistent with his reputation to act as distributor; therefore, to prevent the interruption of the course of justice, the justices of the superior court and of the court of common pleas, and all others who are required by

* The stamped papers arrived in Boston about the 20th of September.

the

the act to make use of stamped papers, be required, 1765 notwithstanding, to proceed without, as if the act had never passed; and that all such proceedings, during this emergency, be declared valid. This report was made in council. The council did not think fit to act first upon it, and sent it down to the house. The house, for reasons which do not appear, caused the report to be recommitted. The governor prorogued the assembly while the matter was in this state. The report, being publick, presaged what the courts and all other officers would, by some means or other, be compelled to. This was all the effect it could have had, if the two houses had accepted it; for, without the governor, it could not be a complete act; and nobody could suppose that he would ever give his fiat to it. The declaring, that any proceedings contrary to an act of parliament should become valid by force of an act, or bare vote, of the assembly, could not comport with any degree of subordination.

This was the state of the province when the assembly was prorogued*, no one measure having been agreed on to quiet the minds of the people.

Several vessels, which arrived from England after the first of November, brought intelligence, that a great part of the people there inclined to the repeal of the stamp act. This, however, it was said, ought not to slacken the pursuit of proper measures in America, but rather to encourage it. The merchants and traders, in and near Boston, came into an agreement to recall all the unconditional orders which had been given for goods from England, and, except sea coal, and some other bulky articles, to send for none, but on condition that the stamp act be repealed. Such as did not join in it became unpopular; but, at this time, there was no compulsion.

* November 5th.

1765 All concerned in ships took care to obtain clearances at the custom-house, dated before the first of November, even for such as were not expected to sail in a month, or longer, after it. Five or six weeks passed without any business in the custom-house, or the courts of law. No wills were proved, no administrations granted, no deeds, nor bonds, executed, nor any business of any kind transacted, where stamped papers were requisite. The inconvenience was great, and it had been borne a great while. The general assembly had been prorogued, and the people were left without redress.

The inhabitants of Boston were convened in a town meeting, to take the affair into consideration. A committee was appointed, of which Mr. Adams was chairman. They prepared a memorial to the governor in council, which was made the act of the town, complaining, that the courts of justice were shut up to all intents and purposes; for which, as they apprehended, no *just* and *legal* reason could be assigned. The town, therefore, prayed, that the people might be no longer deprived, under any pretence whatever, of this invaluable blessing, and that directions be given accordingly. And the town prayed to be heard by their counsel. It was urged, that no stamps could be procured, the distributor having resigned; and that the courts, therefore, though there had not been, as there really were, other reasons sufficient, might be justified in proceeding without stamps, from the necessity of the case. To this it was answered, that great part of the people of the town were instrumental in preventing stamps from being procured, by terrifying the distributor into a resignation; and all other persons had been deterred from taking the trust in his stead.

A transaction, the day before the meeting of the town, ought to be here related.

The

The secretary, after resigning the place of distributor, had been unmolested for three or four months. He received, at length, an anonymous letter, informing him of a report*, that he was seeking to be restored, and protected in his office, and requiring him to make a publick declaration how that matter stood. He knew he was destitute of protection, and from fear of further trouble, he published in the newspapers a declaration, that he would not act in the office of distributor of stamps, &c. This produced a second letter, left in his house, just as he was going to bed, to inform him that his publication was not satisfactory, and to desire him to appear the next day †, at twelve o'clock, under *liberty tree*, to make a publick resignation, and to acquaint him, that his noncompliance would bring on him the displeasure of the "true-born sons of liberty;" and a *nota bene* was added, promising, that, if he complied, he should be treated with the greatest politeness and humanity. Early the next morning, he had notice of advertisements posted up in several parts of the town, desiring the true sons of liberty to meet under the tree at twelve o'clock, to hear the resignation of Andrew Oliver, esq., distributor of stamps, &c. This was distressing to him, and his family. He gave no notice to the governor, nor lieutenant-governor, who were at their houses in the country, and knew nothing of the affair until it was finished; but sent for one of his neighbours, a tradesman of the first character, who professed great friendship to him. By his influence, he hoped to soften the temper of the conductors of this affair; which the tradesman promised to endeavour. He soon made return, that it was not in his power, and advised to a compliance.

* A report raised and industriously spread, without the least grounds for it.

† December 17th. The town meeting was on the 18th.

The

1765 The secretary, being informed that the people were assembled before the time, by a note directed to them, desired to make his resignation at the town house ; but this would not satisfy them, and they insisted on his coming to the tree. Several of his friends, at his desire, accompanied him ; but Mackintosh, the chief actor in destroying the lieutenant-governor's house, attended him, at his right hand, through the streets to the tree, in a rainy tempestuous day, a great number following. About two thousand people were assembled. Several of the select men, and many other persons of condition, were in the house before which the tree stood ; with Richard Dana, esq., a justice of peace and a lawyer of note, who administered an oath to the secretary to this purpose:—" That he had never taken any measures, in consequence of his deputation, to act in his office as distributor of stamps, and that he never would, directly or indirectly, by himself, or any under him, make use of his deputation, or take any measures for enforcing the stamp act in America." After three buzzas, he was at liberty to return home.

This indignity to the third crown officer in rank in the province passed without notice from any authority. No grand jury would consider this as an unlawful assembly. The men, who on one day thus compelled the officer appointed by the crown to distribute the stamps, to swear that he will never execute the trust, the next day represent to the governor, that the distributor of stamps has resigned, and that, therefore, the courts may be justified in proceeding without them. In regular times, the governor and council would have immediately dismissed the justice of peace from his office ; but it passed, now, as if he had been in the regular execution of it. Some imagined that it would provoke parliament to shew its resentment, while others, who
made

made a better conjecture, expected that it would 1765 promote the repeal of the act.

When the memorial of the town came under the consideration of council, a temporary expedient was thought on. Upon a doubt whether the compulsion of the distributor, by the violence of the people, to resign his office, and the consequent want of stamped paper, could justify proceeding without stamps, this was said to be a point of law, and the council declined advising to any peremptory order to the judges of the several courts, but advised the governor to direct them to convene, as soon as might be, and to recommend to the judges of each court, to consider and determine for themselves, whether they would proceed or not. This was very improper, and tending to division, and to increase the flame; but no other way occurred to the council of freeing themselves from trouble.

The town adjourned for two or three days, to know the result, and, when they heard it, voted, "that it was not satisfactory*."

The custom-house officers in Boston gave way to the demands for clearances without stamps; the owners and masters of several vessels being willing to run the hazard of men of war upon the seas: in foreign ports, and in any of the colonies upon the continent, there was no danger. The judges of some of the inferior courts signified, that, when the time came for holding their courts, they would go on as usual. Several judges of probate, there being one for each county, had opened their offices and courts.

* Such votes became frequent, and had greater effect than can well be imagined. The meeting, it is true, was immediately dissolved without any further vote; but the people of which it consisted remained in town, and their directors took care to keep it in their minds, that something further must be done, and, after a short suspension, the subject was to be resumed with redoubled zeal.

This

1765 This was the longest vacation of the superior court; which was not to be held in any county in less than three months. But the chief justice was judge of probate for the first county in the province, and his opinion was evidenced by his refusal to suffer any business to be done in the probate office, or court, where stamps were required. It appeared to be the design of the leaders, to oblige him to conform to the times; and two or three of his friends, who were acquainted with their designs, and who were anxious for his safety, gave him notice, that he had no time to lose; and he must either comply with the voice of the people, quit his office, or quit the country. He had been desirous of going to England ever since the destruction of his house in Boston; and, upon this notice, he left his family in his country house, and went to town, expecting to find affairs in such a state as that it would be necessary to go immediately to New Hampshire, and take his passage on board a mast ship, which then lay ready to sail for England. Upon consulting the governor, and finding that he was willing to appoint a person to act as judge of probate, during the lieutenant-governor's absence in England, and that such person would conform to the people, he quitted the office; and the necessity of his immediate departure was over.

The assembly stood prorogued to the 15th of January. Lest the governor should think fit to prorogue it further, Mr. Otis suggested to the town the necessity of its sitting at that time, and they appointed a committee to wait on the governor, and to desire that he would not order a further prorogation.

In the reign of king Charles the Second, there had been petitioners for the sitting of parliament, which produced abhorrers. Although not strictly constitutional, the petitioners were applauded. It was not a time for the governor to dispute a point which
could

could in the least degree receive any support from 1765
precedent. He, therefore, was silent; probably, he
himself thought it necessary the assembly should
then meet.

He opened the session with a short speech, re- 1766
commending the ordinary business, and just touched
the tender point in controversy, desiring them to
consider the nature of his office, and his obligations
not to dispense with any of the duties of it, when
they should frame any votes for his consent.

They had not forgotten a speech he made at the
close of the last session, in which he had vindicated
himself from charges brought against him by the
house. They had then no opportunity for an answer.
Their zeal in the cause had rather increased, than
abated, during the recess; and the third day after
they met again, in a message to the governor, they
discovered greater marks of a determined spirit, than
ever appeared in any votes, or messages, of preceding
assemblies. They say, "the courts of justice *must*
be open," — "open *immediately*," — "stopping the
courts of justice is a grievance which this house *must*
inquire into," — "justice *must* be fully administered
through the province, *by which* the shocking effects,
which your excellency apprehended from the people's
noncompliance with the stamp act, will be prevented."

The message to the governor was soon followed
by a resolve of the house, sent to the council, de-
claring, "that the shutting up of the courts of justice
in general, in the province, and particularly the su-
perior court, has a manifest tendency to dissolve the
bands of civil society; is unjustifiable on the prin-
ciples of law and reason; dangerous to his majesty's
crown and dignity; and a very great grievance to
the subject, that requires immediate redress; and,
therefore, the judges, and justices, and all other
publick officers in this province, ought to proceed in
the discharge of their several functions as usual."
If this resolve had been concurred by the council, it
must,

1766 must, of course, have been laid before the governor. He would not dare to give his consent to it. His refusal would have turned much of the resentment of the people from the judges, and have brought it upon himself. The council saved him from it. They first ordered the resolve to lie on their table for a week. It was past doubt, that all courts would do business except the superior court; and the next term would not commence in less than two months. They recommended to the judges of the superior court to meet, and to consider and determine, whether they should be able to proceed to business as usual, at the next term, or not. The governor had informed the two houses, that the lords of the treasury had authorized him to appoint a distributor of stamps, in the room of Mr. Oliver; but that he was convinced it was to no purpose to attempt it, under the present circumstances of the province. The judges met, and gave an answer rather undecisive. They apprehended it irregular to come to any determination at that time, as the next term was at a distance; but it was their opinion, that if the affairs of the province should continue in the state they then were in, the court would be *under a necessity* of proceeding to business.

The governor had intimated, that the violence of the people prevented him from appointing a distributor by whom stamped paper might be delivered: the judges insinuated, that, by the like violence, they should be compelled to proceed to business without stamps.

Though there was some uncertainty in the answer, the council was satisfied with it. The house was not; and, after a conference by committees, to no purpose, insisted on the council's passing on the vote of the house which lay on their table. Being thus pressed, they nonconcurring it, and assigned as a reason, that though they were as sensible as the house, that shutting up the courts of justice would be attended with fatal consequences, yet they were satisfied,

fied, from the answer of the justices of the superior 1766 court, and the verbal declaration of some of them, that the court would be open the next term, and business done in it as usual. It would have been thought disparaging to the council, in common times, to assign reasons in support of a vote, because it nonconcurred a vote of the house.

The lieutenant-governor gave no opinion in council whether the court would, or would not, proceed to business; but opposed the vote of the house, because it was nugatory, and could have no effect. If the judges should be of opinion, that the act of parliament was a nullity, or, that the resignation of the distributor, from terror, and the neglect of the governor to appoint another, which were the causes why no stamped papers could be procured, would warrant their going on as usual, the vote was altogether superfluous; if they should be of opinion, that parliament had authority to pass the act, and that withholding the stamps would not warrant their doing business without them, it could not be supposed that the declaration of the three branches to the contrary could alter their opinion; and if it did not, it was unreasonable to require them to act contrary to that opinion. When their judgments appeared to be erroneous, there was no remedy but to remove them, and to appoint men of better judgment in their places.

The lieutenant-governor was much abused in the next newspaper, which asserted, that "the lieutenant-governor, the chief justice of the superior court, who on this occasion also sits as president of the council, a place he has usurped, after engrossing all the places of honour and profit in the province, moved to give it the go-by, saying it was impertinent, and beneath the notice of the honourable board, or in words to that effect."

The council took offence at the publication; but,

L

instead

1766 instead of taking notice of the author, or printer, passed votes which contained a mere denial of the charge, and ordered them to be published.

Timidity pervaded both legislative and executive powers. Every measure which forwarded the determined design of compelling, at all events, all officers within the province to pay no regard to the stamp act, succeeded.

Before the sitting of the superior court in Boston, the expectations of the repeal of the stamp act were much strengthened. The minds of the people were in a less disturbed state. Some of the lawyers who were warmly engaged in the cause of liberty, appeared to acquiesce in the continuance of all actions in which they were concerned. Although the act should be repealed, there was no certainty that any acts contrary to it, which preceded the repeal, would be declared valid. Mr. Otis, indeed, who had at first joined with his brethren, being reproached for it, demanded *in form* the judgment of court in all actions in which he was concerned, but acquiesced in the denial. The chief justice declined being present at the court, and the other judge, having gone through such business as did not require stamps, continued the rest to an adjournment, or to another term*. The court was soon after held in two or three other counties, and the business was conducted in the same way.

The news of Mr. Pitt's declaration in the house of commons in favour of the repeal, his denial of the

* In Massachusetts Bay they had no regard to the terms in England. By the province law, the day for the commencement of the court is stated, in some counties, once, in others, twice, in a year. No court is to continue so long as to prevent its being held in another county on the day appointed, and they will sometimes adjourn the business of one county until that of others is finished, and then return. The whole time, from the commencement of the court until it is adjourned without day, they call the term.

authority

authority of parliament to impose taxes on America 1766 while it continued without representatives, his vindication of the resistance made by the people in America, together with the news of petitions from the manufacturing towns, left but little doubt that the repeal would be carried in the house of commons. Some doubts remained of its fate in the house of lords. But, on the 16th of May, a copy of the act of parliament for the repeal of the stamp act was brought to Boston. No rejoicings, since the revolution, had been equal to those on this occasion. The general language from the friends of liberty to such as had differed from them, was this:—"See what firmness and resolution will do." Although some men expressed their fears whether lasting tranquillity would be the consequence, yet there was scarcely a person to be found, even among the officers of the crown, who did not desire the repeal. It freed them, for a time at least, from present certain distress and wretchedness. The consequences were at a distance; and, though dangerous, not certain. X

The act which accompanied it, with the title of, "securing the dependency of the colonies," caused no allay of the joy, and was considered as mere naked form.

Letters from England, which were published at the same time, allowed that governor Bernard's letters to the ministry, and the petition from the council and house in 1764, which had been drawn by the lieutenant governor, forwarded the repeal. But they had no merit with the prevailing party, because they solicited for the repeal, as matter of favour, and not as a claim of right.

Many of the principal merchants, who had been very active in opposing the stamp act, were most earnestly urged by the merchants in London, their correspondents, by all possible means to promote peace and order, and a return to the former acknow- X

1766 ledgment of the authority of parliament. And in a short time after, the governor received a very good letter from Mr. Conway, the then secretary of state, in which the people were put in mind of the lenity and tenderness of parliament, and strongly excited to return to a cheerful obedience to the laws, and legislative authority, of Great Britain.

The body of the people of the province were tired of disorder, and, when left to themselves, were well disposed to comply with the advice given them; but men who had influence over the people, considered the repeal as a victory. An experiment had been made, which persuaded them, that, by union and firmness, the colonies would be able to carry every point they wished for. Power, once acquired, is seldom voluntarily parted with. In less than a fortnight after the news, this power was shewn on the day for the election of councillors.

Mr. Otis was chosen speaker of the house, and Mr. Adams the clerk*. Some of the governor's friends thought Mr. Otis would be of less importance in the chair than out of it, and advised against a negative. But the governor did not think with them. He was unwilling also, in this first instance, to yield to opposition, and disapproved the choice, but consented to Mr. Cushing, who was chosen in his stead; and who was of the same party, but not so important. The negative raised the resentment, and increased the strength, of the opposition, when the choice of councillors came on.

The lieutenant-governor, the secretary, one of the judges of the superior court, and the attorney-general, were struck off from the council. Another of the judges, apprehensive of this slight, chose to resign.

* The office having some emolument, it had generally been filled by one of the members, who took the same share in debating and voting as if he had not been clerk, and rather acquired, than lost influence by being so.

before

before the election came on. Men from whom the 1766 governor expected obstruction, rather than aid, to his administration, were chosen in their stead. No other exception could prudently be taken to this choice of the house, as they had an undoubted right to vote for whom they thought fit, except that it had a tendency to rekindle the flames of discord and contention, which otherwise might have expired.

The governor had equal right to declare his disapprobation of the persons elected; and he refused his consent to six of them, who appeared to him to be most unfit for the office. Governors, to avoid giving offence, had, from disuse, almost lost their right of negating the council. The house had kept up their right by constant use, though never by making so great a change at once, except in one instance, at the time of the land bank. He had now made a very proper use of his authority, and had furnished a good precedent for like future use.

But he did not stop here. In his speech to the council and assembly, he takes notice of this proceeding, as being an attack upon government in form, with a professed intention to deprive it of its best and most able servants, whose only crime was their fidelity to the crown; and of his refusal to consent to six of the persons elected, as maintaining the king's authority against this ill-judged and ill-timed oppugnation of it. This gave the house an advantage, which they made the most of, in their answer.

They inquired "what oppugnation they had been guilty of: they had given their suffrages according to the dictates of their consciences, and the best light of their understandings; they had a right to choose, and he had a right to disapprove, without assigning any reason; he had thought fit to disapprove of some: they were far from suggesting, that the country had by this means been deprived of the best and ablest of its servants." They say, with a sneer,

1766 sneer, "they had released the judges from the cares and perplexities of politicks, and given them opportunity to make still further advances in the knowledge of the law; they had left other gentlemen more at leisure to discharge the duties and functions of their important offices: this, surely, was not to deprive the government of its best and ablest servants, nor could it be called the oppugnation of any thing, but of a dangerous union of legislative and executive powers in the same persons."

Mr. Otis was supposed to have a principal share in the composition of this answer. The sneer at the judges was owing to the disappointment of his father, who had practised in the courts. Most of the judges had not. They had, however, for many years applied themselves to the study of the law, and had given general satisfaction, perhaps as much as those who had been at the bar. The danger from the union of legislative and executive power was a mere fallacy.

Where the whole legislative and judicial powers are united in the same person, or the same body of magistrates, the government becomes arbitrary. In a mixed government, like that of the English, judges may be, and are, members of one or other branch of the legislature, without such danger. In Massachusetts Bay, from the date of the charter, the superior judges had, with very few exceptions, been elected into the council, and this objection had never been started.

A day or two after the governor's speech, he received the letter, just mentioned, from Mr. Conway. This he thought proper to lay before the two houses, and to accompany it with a second speech, much more animated than the first.

He laments that this letter did not arrive before the meeting of the general court, and flatters himself it would have prevented, what is now more to be

be lamented than ever, the excluding from the king's 1766
 council of the principal crown officers ; " men not
 only respectable in themselves, but quite necessary
 to the administration of government. In this way,
 they had disappointed the expectations of the king
 and parliament, before they had been communicated
 to them ; they will not, they cannot, avoid being
 chargeable with unthankfulness and dissatisfaction,
 on the ground of former heat and prevailing preju-
 dice. Let their right to choose whom they please
 be ever so absolute, the distinction between a right,
 and the propriety of exercising it, is very obvious ;
 a distinction lately* used with great effect to their
 own interest. Next to wishing that this had never
 happened, it was now to be wished, that some mea-
 sures may be found to draw a veil over it, and pre-
 vent its bad effects. If any expedients can be found
 out, he will heartily concur with them." He then
 recommends to the house of representatives a com-
 pliance with the requisition in Mr. Conway's letter,
 founded upon a resolve of the house of commons, to
 make compensation to the sufferers by the late riots ;
 and returning to his address to both houses, " in-
 treats them to recollect themselves, and consider well
 what they are about. When the fate of the province
 is in the scales, will they suffer themselves to be
 influenced by party animosities or domestick feuds ?
 Shall this fine country be ruined because every per-
 son † in the government has not been gratified with
 honours or offices according to the full of his preten-
 sions ? Shall the private interests, passions, or re-
 sentments, of a few men, deprive this whole people
 of the great and manifold advantages, which the

* This refers to the repeal of the stamp act.

† He refers to Mr. Otis's father not being appointed to a parti-
 cular office, to which he made pretences, and to the several offices
 in the county where he lived, given to him and his friends as an
 equivalent.

favour

1766 favour and indulgence of their sovereign, and his parliament, are even now providing for them?"

The governor had been encouraged by some of his friends to expect that the house might be brought to an election of six councillors, to fill the places of those whom he had negatived; and he had good right to call upon them to do it. Their refusal would have brought a just charge of departing from their charter, in order to prevent governors from using their power of negativing. They had been in the neglect of it many years. When a councillor declined accepting, they would proceed to the choice of another in his stead. When governor Belcher, in 1741, negatived thirteen, the house would choose none in their stead; and there had been no instance of a choice since, to supply the place of a negatived councillor. It was of great importance to the party to prevent it at this time, seeing some, if not all, who had been left out, had a fair prospect of being now elected. All, except the secretary, lost their election for want of three or four votes only. The lieutenant-governor had several votes more than a majority of the two houses, and lost his election by an unusual accident. In voting for eighteen in one list, nineteen had the majority of the whole voters, and, when this happens, it had been the custom for those who had the highest number to be declared, and any of a less number than they, rejected.

The house, in their answer, are very short upon the subject, and inform him, "they are under no apprehensions of any bad effects, especially when they reflect on the ability and integrity of the councillors he had approved of, and they beg to be excused from any unnecessary search after palliatives or expedients."

They knew that, by this stroke, they had brought the council to join with them in every measure material to the cause in which they had engaged.

In other parts of their answer, they discover how

how much he had offended them ; they say, “they do 1766
 not find, in the secretary of state’s letter, the least
 intimation that it was expected by his majesty, or
 his ministry, that they should elect into his majes-
 ty’s council the principal, or, indeed, any other
 crown officers* ; they believed he was the first go-
 vernor of the province, that ever, formally, called
 the two houses of assembly to account for their
 suffrages, and accused them of ingratitude and dis-
 affection to the crown, because they had not be-
 stowed them on such persons as, in his opinion, were
 “quite necessary to the administration of govern-
 ment ;” they had made their elections, after mature
 and deliberate consideration, with special regard to
 the qualifications of the candidates, and, all circum-
 stances considered, had chosen those whom they
 judged most likely to serve his majesty, and promote
 the welfare and prosperity of the people ; they will
 embrace the first convenient opportunity to consider,
 and act upon, the recommendation in Mr. secretary
 Conway’s letter, termed by the governor a requisition,—only, if it be founded on so much justice and
 humanity that it cannot be controverted, or, if the
 authority with which it is introduced should pre-
 clude all disputation about complying with it, they
 would be glad to know what freedom they have in
 the case. In answer to his questions, proposed
 with so much seeming emotion, they beg leave to
 declare, that they will not suffer themselves to be
 in the least influenced by party animosities, or “do-
 mestick” feuds, let them exist where they may ; and,
 if they can possibly prevent it, this fine province
 shall never be ruined by any person. With regard
 to the rest of his speech, they are sorry to be con-

* This was *ad hominem* ; for such an intimation would undoubtedly have been complained of, as an invasion of their liberties, or too dangerous to be complied with.

strained

1766 strained to observe, that the general air and style of it savour much more of an act of free grace and pardon, than of a parliamentary address to the two houses of assembly; and they most sincerely wish that he had been pleased to reserve it, if needful, for a proclamation."

The warm spirit, which appeared the last year against all who would not go the full length of opposition to the stamp act, was not without its influence over many of the members of the council, and that freedom and independence, which the majority then preserved, was certainly much owing to the gentlemen who this year were struck out of the council. Though the governor was sensible of the danger, he did not expect opposition from the council, equal to that from the house; and was the more surprised to find their address, notwithstanding it preserved decorum, beyond that of the house, carrying stronger marks of a contrariety of sentiments to those he had discovered in his speech, and more fully vindicating the elections, than either of the answers from the house.

The house frame their address in answer to both his first and second speech; and, after a return of congratulation upon the repeal of the stamp act, "they cannot," they say, "without regret, take notice of any thing which threatens the least cloud over the general joy upon the occasion. And, with pain, they express their apprehensions that his speech may tend to lead some, unacquainted with the state of the province, to entertain an opinion of the inhabitants which they did not deserve. By inflammations, distractions, infatuations, and the fury of the people, he seemed to refer to some enormities, committed by unknown and abandoned persons, in a time of universal uneasiness and distress. He could not mean to impute these to the body of the people, or any branch of the government. The reputation

putation of the province could not be affected by 1766 them, and it needed no veil on that occasion. Notwithstanding the intimations unhappily dropped, they were sure no ill temper generally prevailed. To say there had been an attack upon government in form, and an ill-judged and ill-timed "oppugnation of the king's authority," is a heavy charge: a regard to their own character, to truth and justice, and the reputation of the province in which they have the honour to serve his majesty, oblige them to speak with freedom, without meaning the least disrespect. Have the people of the province been guilty of an attack, &c.? They know of no such thing." After a very particular mention of the general gratitude, through the province, upon the repeal of the stamp act, and of other evidence to the contrary, "they beg leave to assure the governor, that, if he had a particular reference* to the transaction of both houses in the late election of councillors, there was nothing on that day, which, with any shadow of propriety, could be deemed an attack upon government, or an "oppugnation" of the king's authority. Every part of the legislature had acted in its proper place. He had signified his disapprobation of some of the persons elected. Nobody called in question his right, or opposed him in the exercise of it. How far his proceedings, or those of the two houses, were expedient, it was not proper for them to deliver their opinion; but they were obliged to assert, that nothing had taken place which was not constitutional, and according to the charter. Though an election, duly made, might be disagreeable to the chair, they were persuaded that, upon reflection, he would not think it deserved to be called a "formal attack upon government," or, an

* The reference in his speech, to that alone, was so plain as to leave no room to suppose he referred to any other transaction.

"oppugnation"

1766 "oppugnation" of the king's authority. Should any thing of that sort ever be attempted, the board would zealously defend their sovereign's honour, and the constitutional power of his representative." They add, as a *douceur*, "that Mr. secretary Conway, in his letter, had made such honourable mention of governor Bernard's conduct, that they cannot conclude, without recognising his excellency in the united character of a true friend to the province, and a faithful servant to the crown."

The governor made no answer to the house. He declined explaining any parts of his speech to the council, but intimated his having been used to see the meaning of what he said in publick, perverted to serve particular purposes.

In most of the addresses, votes, and other proceedings in council, of importance, for several years past, the lieutenant-governor had been employed as the chairman of the committees. Mr. Bowdoin succeeded him, and obtained a greater influence over the council than his predecessor ever had; and, being united in principle with the leading men in the house, measures were concerted between him and them; and from this time the council, in matters which concerned the controversy between the parliament and the colonies, in scarcely any instance, disagreed with the house.

The governor calls this an ill-timed measure. It certainly caused him to shew a warm resentment, to which both council and house made an equal return; and this, at a time when there was a general disposition throughout the province to an orderly submission to government. It was the beginning of a breach between the governor and the council, which was never healed, but gradually increased until he left the province. On the other hand, it must be acknowledged that the assembly were the aggressors, and that this measure was ill-timed, and had

had a tendency to raise the resentment of govern- 1766
ment in England, and to keep open that breach
which it was hoped the repeal of the stamp act would
have closed.

When the house came to consider the case of the lieutenant-governor, and others, who had lost their property by the fury of the people, they expressed their abhorrence ; and promised that nothing should be omitted in their department, to bring the perpetrators of so horrid an act to exemplary punishment, and to a pecuniary restitution ; but they doubted whether they had authority to make their constituents chargeable with the losses, as it would not be an act of justice, but rather of generosity ; and, therefore, they referred the consideration to another session, that they might have opportunity for taking the minds and instructions of their several towns. The governor considered this as giving the recommendation the go-by ; and urged them to make the compensation immediately, and he would join with them in an inquiry into the perpetrators and abettors, and doubted not they should be able to trace the matter back to its origin. But they had taken their measures, and would not alter them ; and, without any thing else worth notice in the session, he put an end to it. He made, however, but a short prorogation, having this affair of satisfaction to the sufferers much at heart.

In October, the governor met the assembly again, for no other purpose ; and desired a definitive answer. Contrary to his expectation, most of the towns in the province had either voted in favour of satisfaction to the sufferers, or left it to their representatives to use their discretion. A majority of the house, notwithstanding, determined upon the question, against a compensation by a tax upon the people. Some proposed a lottery. Others men-
tioned

1766 tioned other schemes for raising money ; but none were approved of.

At length, it was proposed that a grant should be made, equivalent to the loss which the sufferers had sustained, but that it should pass through the formalities of an act or law ; and that, by the same law, indemnity, and free pardon should be granted to the perpetrators of that horrid act, which the same house of representatives, in the last session, declared to deserve exemplary punishment, and also to all other persons* who had been guilty of any crimes or offences against law, occasioned by the late troubles. They ordered the bill to be printed for the consideration of their towns ; and, after a short recess, upon their meeting again, they passed it to be enacted. The council concurred, but it was a doubt with the governor, whether he could be justified in giving his assent to it. The house, in a message, had acquainted him that, in their opinion, an indemnification of the offenders was of equal importance and necessity with a compensation to the sufferers ; that his majesty had expressed his pious and benevolent intention to forgive, and even to forget, the undutiful behaviour of any of his subjects in those unhappy times ; and, therefore, they had

* This proceeding in the house took its rise from one of the members, a principal lawyer in the county of Hampshire, several of whose clients were then in prison, in that county, for not paying their fines and the costs of court, having been convicted of a riot raised to oppose the execution of the stamp act. The attorney-general, having advised with the court, caused them to be indicted for a riot, and not for treason. This gentleman took exception to the indictment, the offence amounting, indisputably, to treason. The court was sensible that like exception, in like cases, had been taken in England, and overruled ; and, upon those authorities, overruled the exceptions in this case, and gave judgment. The bill was framed to include these offenders in the indemnity. It was very doubtful whether, without this provision, the grant would have been made.

framed

framed their bill accordingly. They passed a re- 1766
 solve, that they were influenced by a loyal and grate-
 ful regard to his majesty's most mild and gracious
 recommendation, by a deference to the opinion of
 the illustrious patrons of the colonies in Great Bri-
 tain, and by a regard to internal peace and order,
 without respect to any interpretation of his majesty's
 recommendation into a requisition* precluding all
 debate and controversy, and with full persuasion
 that the sufferers had no just claim or demand on the
 province; and that this compliance ought not here-
 after to be drawn into a precedent. To this resolve
 they added another; that it was the indispensable
 duty of the sufferers to have applied to the government
 "here," rather than to the government "at home,"
 and that the neglect of any of them to apply to this
 assembly, till October last, while they were com-
 plaining *at home*†, is very reprehensible‡. And a
 third followed, thus expressed:—"Whereas it ap-
 pears to this house, by the resolves of the honourable
 the house of commons of Great Britain, that it was
 their opinion that the resolutions of divers assem-
 blies in America had a tendency to encourage the
 riots that happened there, resolved, that this cannot
 be said of the resolutions of the house of representa-

* The assemblies, during the war, had been used to the term
 requisition, which Mr. Pitt had thought proper, and to which no
 exception was then taken.

† In England.

‡ This resolve refers immediately to the lieutenant-governor,
 who, being a servant of the crown, had declined applying to the
 house of representatives for compensation as an act of favour, not
 knowing the pleasure of the king, or the mind of his ministers;
 and, upon a representation to the secretary of state of his case, and
 prayer for relief, rested altogether upon the measures which might
 be judged the most proper for obtaining it. A claim, as an act
 which the house in justice was held to, he had reason to think,
 would have exceptions made to it, and, by giving offence, would
 obstruct the compensation.

tives

1766 tives of this province, as the said riots happened about two months before any such resolutions were made."

The governor ventured to give his assent to the bill. Regularly, acts of pardon and indemnity originate with the king. Treason was an offence excepted, in the governor's commission, from other capital offences which he, as the king's representative, was authorized to pardon. On the other hand, if the act should not be approved in England, all the effect would be the suspending, for three or four months, of prosecutions which, experience had shewn, could not be carried on. The principal offenders appeared publicly, even such as had been rescued out of prison. But, as to the compensation, the act would have an immediate effect, and could not be recalled. The act was disapproved, upon its being laid before the king, merely from the nature of it, and the danger of establishing a precedent; but the money was paid before the news arrived, and nothing further passed upon the subject.

While the minds of people of every rank and order, in all parts of the province, were more or less disturbed with apprehensions of taxes by authority of parliament, a greater opposition than usual was carrying on, in some of the sea-port towns, against the custom-house officers; and the part which the laws, as well as their instructions and oaths, require governors to take, in discountenancing all illicit trade, brought the clamour of many people, not against the custom-house officers only, but against the governor also. Seizures had been more frequent than usual. Every addition to the emoluments of the governor in that way, is always seen with an invidious eye. One merchant had flattered himself, that the importation of a cargo of French wines would be connived at; and professing to be bound to St. Eustatia, or some other foreign port, the ship
came

came to Boston, under pretence of stress of weather, 1766
 a leak, or some other necessary cause, and applied
 to the custom-house for leave to unload. The vessel
 and cargo, of great value, were seized, and adjudged
 to be forfeited, the fraudulent design being fully
 proved. The owner complained, that he had been
 encouraged to engage in such a scheme, and had
 been deceived. Another ship from Holland, by way
 of the Orkneys, belonging to a gentleman of the
 largest property of any person in trade, was seized
 and condemned at the court of admiralty in Boston,
 for importing goods more than had been entered at
 the custom-house in Scotland. The owner brought
 an action, at common law, against the officers of the
 customs, by whom the seizures had been made, for
 recovery of the value of ship and cargo. The court
 imagined their opinion, upon what was a mere mat-
 ter of law, would have the same influence with the
 jury, as formerly* in a like case. The judges could
 have no doubt, that the decree of the court of ad-
 miralty, where it had jurisdiction, could not be tra-
 versed and annulled in a court of common law ; but
 the jury, notwithstanding, gave their verdict for the
 plaintiff. As it was a personal action, and the value
 more than 300*l.* sterling, an appeal clearly lies, by
 charter, to the king in council. It was claimed, and
 granted. This put the owner upon considering the
 consequence. The fraudulent breach of the acts of
 trade would evidently appear. An inquiry into
 former acts of the like kind was threatened, and,
 though they might not much affect his character in
 America, they would in England, where smuggling
 was not reputable. He, therefore, chose to take no
 benefit from the judgment of the court of common
 law, to acquiesce in the decree of the court of ad-

* Page 91.

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miralty,

1766 miralty, and to comply with the demands made on him by the custom-house officers for their cost and trouble in the suit. This was a cause of great expectation, and the verdict was matter of triumph to the illicit traders, and to such as called themselves friends to liberty. It was considered as a victory over the court of admiralty. The final disappointment increased the prejudices against the custom-house officers.

Another affair, just after these, was represented as a great hardship upon the merchants affected by it. To save the duty upon foreign molasses and sugars, the masters of such vessels as had taken in their cargoes at the French West India islands had been used to purchase clearances, signed with the name, if not the hand writing, of the governor of Anguilla, who acted also as collector. Although it was known that the island did not grow as many sugar canes as to afford a cargo for one vessel, yet the collector of the port of Salem had admitted a considerable number of vessels to be entered as coming from Anguilla, and appeared quite satisfied. Some had made more voyages than one in the same way, and others were going into the like practice. The trade with the French islands, while the act of the sixth of George II. was in force, had been carried on from this port of Salem for many years together, by composition made with the officers of the customs, in suffering a small part of a cargo only to be entered, and the remainder to be landed, or shipped to Boston, without duty or entry. And, though the custom-house books must have shewn that many thousand hogsheads of molasses had been exported from the town of Salem in a year, more than had been imported, yet no notice had been taken; and it was considered as if it had been connived at in England, as well as in America. The owners of
vessels

vessels thought themselves as secure now, after an entry at the custom-house once admitted, as they had been formerly. On a sudden, libels were filed, and prosecutions commenced in the admiralty, against many of the principal persons who had been concerned in this fraudulent proceeding, for the forfeiture of treble the value of the goods thus imported, and to the amount of nine or ten thousand pounds sterling. If the collector had caused the vessels and cargoes to be seized at the time of the entry, they would have been forfeited, if the fraud had been proved, and nothing more. He was charged with delay, in order to draw as many into the net as he could ; but, in order to exculpate himself, urged, that he delayed no longer than until he had evidence upon which he might support a prosecution. This raised a loud clamour, a great share of which was against the governor ; who, being largely interested in the success of the prosecution, was charged with promoting it to serve his own interest, more than from a regard to the duty to which the law, and his oath, in as strong terms as can be, had obliged him. The surveyor-general of the customs was supposed rather to discountenance these prosecutions, and had been at variance with the governor on other accounts. Before the libels came upon trial, a composition was made, and one-third of the sum demanded paid, computed to be about the value of the goods illicitly imported. The surveyor-general, not long after this transaction, suspended the collector for other alleged mal-conduct in his office, and he was never restored.

The publications, in the newspapers, against the governor were abusive and licentious to a great degree. Attempts were made to destroy his character by false and groundless charges, which easily obtain credit with the people, when brought against a governor. At length, a very sensible and fair

1766 writer*, under the signature of Philanthropos, undertook his vindication, and, in a series of papers, much attended to, refuted the calumnies brought against him, and silenced his calumniators.

After great perturbations for two years and a half, with little interruption, there was a short space of tranquillity. Besides the repeal of the stamp act, the duty on molasses had been reduced from three-pence to one penny per gallon; and encouragement had been given to expect a revisal, and favourable alteration, of several acts of parliament which restrain the commerce of the colonies. There had been a change of ministry, but the ministry was still thought favourable to the colonies; and the agent for the house of representatives† had reported the secretary of state for the southern department to be as friendly as his predecessor had been. Thus stood affairs in Massachusetts Bay at the close of the year 1766.

1767 The colonies, in general, during these disputes, had acquired a new set of ideas of the relation they stood in to the parliament of Great Britain. The constitutional authority of parliament to impose taxes on America was admitted in none. “No representation, no taxation,” became a very common expression. “No representation, no legislation,”

* Jonathan Sewall, esq., afterwards appointed attorney-general for Massachusetts Bay, and judge of the admiralty for Quebec and Nova Scotia.

† I have yesterday waited on lord Shelburne, our new secretary of state, and his lordship expressed himself to me in such terms as gave me great satisfaction; and desired me to assure the house, he had the highest regard for America, wished their prosperity, and would make it his care to promote it: you might be perfectly easy about the enjoyment of your just rights and privileges, under the present administration. But, on the other hand, the dignity of government must be maintained, as well as a due regard to the administration here; which I assured him was their real disposition, *as was manifest by the tenor of all their addresses.*—*Deberdt's Letter, Sept. 19, 1766.*

designing

designing men knew would obtain by degrees, and 1767 become as common. One was as much the undeniable right of an Englishman as the other. The idea, however, of their being "unalienable" rights, had not yet obtained. A voluntary submission to the authority in general, therefore, might and ought to be acknowledged, and it was allowed to be the interest of the colonies that it should continue. From admitting a principle of partial independency, gradual advances were made, until a total independency was asserted.

In Massachusetts Bay, all parties continued to profess their obligations to adhere to the constitution, according to the charter. The popular branch of the legislature had, however, acquired a much greater proportion of power than it ever possessed before. The house of representatives had been continually increasing in number; every new town adding two members, if it thought fit to choose them. The civil officers, besides the councillors, were annually elected by the joint vote of council and house. As the number of members in the house increased, its weight increased in proportion, the number of the council continuing always the same.

If any controversy should arise between the several branches of the legislature, to be decided in England, it seemed reasonable that each branch should be heard by an agent, in defence of its respective rights. In all matters which concerned the general interest of the province, an agent had always been appointed by the whole legislative power, until the house of representatives refused to join with the other branches, and appointed an agent elected by themselves only. To him, they had from time to time given instructions in matters which had respect to the general interest, without the privity of the other branches; and he had been allowed to appear at the boards in England; they had sent their delegates to join with delegates from other assemblies; they

1767 they had a standing committee, with power, after the prorogation of the assembly, when the power of all committees ought to cease, to correspond with committees of other colonies in matters of general concernment; and, though the following novelty cannot be mentioned as an instance of their assuming what they had no right to, yet it gave them great additional weight and influence over the people, they had caused a gallery to be built, and opened, that all persons who inclined to it, might hear their debates; and a speech, well adapted to the gallery, was oftentimes of more service to the cause of liberty than if its purport had been confined to the members of the house.

For thirty or forty years after the charter, the members of the town of Boston had less weight in the house than many of the members from the country towns; and there was a jealousy lest the town should obtain too great influence. The influence of the members of the town had for some years past * been increasing, and in the late controversy they became the leaders, and every measure relative to it was projected and conducted by them. Their influence was still greater in the town of Boston. In the intervals between the sessions of the general assembly, the inhabitants of that town were frequently called together; and votes and resolves were passed, which affected the interest of the whole province. Their proceedings were countenanced by the house, the leaders being the same in both places.

* This change was conspicuous upon Mr. Otis's coming into the house. His father had been many years member for the town of Barnstable, of which he was an inhabitant, and always in Mr. Shirley's interest, to which a great part of the town of Boston was opposite; and had rendered himself so obnoxious to that town, that some of the principal inhabitants had made a strong effort to prevent his election for Barnstable; but, upon his difference with Mr. Bernard, and upon his son's being chosen one of the members for Boston, the father became a strong advocate for the town, and drew much of the country interest after him.

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A select number of the inhabitants of the town met, 1767 with the members, at regular stated times and places in the evenings, at least once a week ; and at these meetings, the meetings of the town, and other necessary measures, were projected and settled, and from hence, it was supposed, the newspapers were generally furnished with speculations and compositions for the service of the cause in which they were engaged*.

It may be questioned whether any persons engaged in this cause could hope for a separation of the colonies, and a total independency upon the parliament of Great Britain, during their lives. To effect this, the power of the colonies, if opposed by the power of the kingdom, must appear to them very insufficient. Their plan, however, seems to have been, not to attain to any one point short of independency, and there to stop ; but *pro re nata* to be continually making advances towards it, and to be prepared to accomplish it, whenever it should be practicable.

The repeal of the stamp act, notwithstanding the declaratory act which accompanied it, was considered, throughout the colonies, not as a mere act of favour, like the repeal or alteration of the cyder act in England, because it was deemed by those immediately affected by it an unequal burden ; but as a concession, made to the claim of exemption from taxes while not represented. It was allowed, that there remained a degree of authority in parliament over the colonies, but to what extent was con-

* Information was brought to governor Bernard, that at one of those meetings it had been proposed by Mr. Molineux, at the head of five hundred men, to surprise the garrison at the castle ; a strange, mad proposal, if such a one were ever made. This the governor mentioned in one of his letters to the ministry, but he was not at liberty to make known the evidence of the fact. He believed it to be true. He was afterwards charged with gross misrepresentation, in order to set the province in an unfavourable light. If it was true, the persons who brought the charge against him must have been privy to it.

troverted.

1767 troverted. There was such a multitude of different apprehensions of the bounds of this authority, that a general agreement upon any line was despaired of.

In the first addresses from the council and house of representatives of Massachusetts Bay, after the repeal of the stamp act, the former acknowledged their obligations to yield *a due* submission to the legislative authority of Great Britain; the latter assured the king, that they considered *a constitutional subordination* to the parliament their great privilege and security. From such expressions, no judgment could be formed, to what acts of this authority submission was *due*, or what degree of subordination was *constitutional*.

The first instance of open refusal to submit to the authority of parliament, that took place after the repeal of the stamp act, was in the province of New York. By an act of parliament, the assemblies in the colonies were required to make provision for quartering the king's troops. The assembly of New York made provision in part only. Sir Henry Moore, the governor, consented to the act, and gave this reason, that the articles not provided by the assembly were only such as were not provided for troops in barracks in England. This was not thought a sufficient reason, and the assembly was informed, by a letter from lord Shelburne, then secretary of state, to the governor, that the king expected a due and cheerful obedience to the act, in the full extent and meaning of it. The assembly resolved not to comply, and in their answer to the governor's speech to them, called in question the authority of parliament. The parliament, thereupon, passed an act to suspend the legislative power of the assembly of New York, so long as the act of parliament for quartering troops shall remain not complied with.

By a mere slip of the governor, an opportunity was afforded to the assembly of Massachusetts Bay,

to

to make a publick declaration of their sense of this 1767 act of parliament, while the dispute was carrying on with New York.

By an act of the province, barracks had been built at Castle William, for the reception of the king's troops, when they should be ordered there; and it had been the long usage to provide fire and candles for such troops, and the governor, with the advice of council, had paid the charge, by warrant on the treasury. Just before this dispute at New York, a company of artillery, ordered on some occasion or other to Boston, were lodged in the barracks, and provision was made as usual. This was notorious. A session of assembly occurred soon after, and no exception was taken. The affair at New York became the subject of general contemplation before the next session*. The house, soon after they met, in a message to the governor, desired to be informed whether any provision had been made for the company of artillery at the expense of the province; and if there had, by whose orders; and whether any more troops were expected to be quartered in the province. The governor gave a sudden answer. Instead of only saying, that he had done no more than what the law of the province and constant usage authorized him to do, he observed to them, that this provision had been made in pursuance of a late act of parliament during the recess of the assembly; that he intended to have acquainted the house with it; and that he had no advice of any more troops, nor reason to expect any. The house was soon ready with a reply. They justly observed, that the governor and council derive their authority to issue money out of the treasury from the charter, which limits them to such acts of the assembly as are, or may be, in force within the province; that it was most grievous to them to find

* January 28th, 1767.

1767 a late act of parliament mentioned, in pursuance whereof the governor, with the council, had created this expense to the province; that they could not help expressing a deep concern, that an act of parliament should yet be in existence, which appeared to them to be as real a grievance as was that which so justly alarmed the continent; that the governor and council, by taking this step, had, unwarrantably and unconstitutionally, subjected the people of the province to expense, without giving the house an opportunity of passing their judgment upon it; and had also put it out of *their* power, by an act of their own, to testify the same cheerfulness, which the assembly had always shewn in granting to his majesty, of their free accord, such aids as his majesty's service required.

The governor discovered his error, and, by a subsequent message, observed to the house, that the money was constitutionally issued out of the treasury for a purpose acknowledged by an act of the province, and agreeable to usage in like cases. It was true, indeed, it coincided with the act of parliament, so far as respected many of the articles required by that act; but if there had been no such act, the council would have thought themselves obliged, by force of an act of the province, to make the provision they had made, without which the barracks would not answer the purpose intended.

The house, having thus made a publick declaration of their sense of the act of parliament against which the assembly of New York was contending, took no notice of this explanation, and suffered the affair to drop.

These proceedings of the two assemblies of New York and Massachusetts were disapproved of by some of their best friends in England, and even by some of their chief advocates in America, as tending unnecessarily to revive that flame, which,
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it was to be wished, might have been suffered to 1767 expire*.

Temporary acts for quartering troops, which extended to, and had been carried into execution in America, had been revived every session of parlia-

* "The address of the New York assembly to their governor has made a great noise and disturbance throughout this kingdom in all companies and conversations. It is generally said that they are in a state of rebellion, and are endeavouring to throw off their dependence. I hear the ministry are in great and deep concern about it. Most people are of opinion they will certainly enforce the execution of the act of parliament, and, to that end, will send over troops, ships, &c."—*Letter from London, Feb. 12th, 1767.*

"The open disobedience of the assembly of New York to the act for quartering the soldiers has raised a spirit in parliament which I have not seen before. The lord chancellor said, some time ago, that the colony was in a state of delinquency. The first lord of the treasury and the secretary of state intimated, in the house of lords, that lord Chatham, with the assistance of the lord chancellor, the lord president, and others, is preparing a bill for the maintenance of the authority of government. The ready obedience of Pennsylvania was mentioned to their honour. I am sorry to find that your assembly has been brought to imitate those of New York. Those men surely must have little regard to the interest of the province, who have been using every art to mislead an honest and well meaning people for their own factious purposes. Lord Mansfield, yesterday, in the house of lords, made one of the finest speeches I ever heard, upon the wickedness and folly of your incendiaries, who, against the conviction of their own minds, are endeavouring to raise jealousies and to alienate the affections of his majesty's subjects in America from his government here; and upon the fatal tendency of a separation, if it could be effected, as it must necessarily produce dissensions among yourselves, and wars between the several colonies, for want of a common arbiter, and, at last, end in a state of subjection to some foreign power, who would draw the bands of submission much tighter than they ever were before. All that he said carried conviction. I hope that his reasonings will never come to be verified by experience."—*Extract of a Letter from London, April 11th, 1767.*

The author of the Pennsylvanian Farmer's letters, which were published about this time, who formed a temporary political creed for the colonies, thought that the New York assembly "acted imprudently, considering all circumstances, in not complying so far as would have given satisfaction, as several other colonies did," though he thought the restraint laid upon the legislature of New York, by an act of parliament, was pernicious to American freedom.—*Letter 1st.*

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1767 ment for ten or twelve years. Such an act was in force at the time of the general stir against the stamp act. No mention was then made of it as a grievance.

✓ The act of parliament for suspending the legislative power of New York was considered in the colonies as unconstitutional. Charters were said to be sacred. ✓ Powers and authorities, once granted by the crown for the rule of government in a colony, were deemed equivalent to charters. In both cases the people were alike induced to purchase and cultivate lands in such colonies, relying upon the continuance of the privileges contained in such charters and commissions. From this time, the authority of parliament ✓ to pass acts affecting the interior polity of the colonies was also called in question, as destroying the effects of such charters and commissions, and therefore being within the reason of the exception to its authority to alter the charters or commissions themselves. The king, the lords, and the commons, it was said, form the legislature of Great Britain. So, the king, by his governor, with the councils and the assemblies, form the legislatures of the colonies. But, as the colonies cannot make laws to extend further than their respective limits, no, not beyond the banks of the rivers which divide some of them, it becomes absolutely necessary for the parliament of Great Britain to interpose, in all cases where the legislative power of the colonies is ineffectual. Here the line of the authority of the parliament of Great Britain ought to be drawn. All beyond it is an encroachment upon the constitutional powers of the legislatures of their fellow subjects in America.

This was asserted to be the constitution of the colonies, and it was held out to the people in newspapers and pamphlets, in every colony from Virginia to Massachusetts Bay, as early as the year 1767.

This one would think enough to alarm, not only the power which was thus attacked, but all other parts

parts of the empire, which, until that time, had 1767 always considered the colonies as equally subject with themselves to this power in all cases whatever. But, besides the publick avowal of these principles by individuals, a convention of delegates from the principal colonies had been held, and a partial independence, which must work a total, had been there avowed also. And further, committees of correspondence had been appointed in most of the colonies, and a confederacy formed for maintaining this independence.

Confederacies to limit the supreme authority can never be admissible under any form of government. The effect of neglecting them appeared in annulling the constitutional powers of government within each colony, so far as related to the support of the supreme authority of parliament, while, in all other matters, they continued in full force and vigour. And the revolt of the colonies ought to be dated from this time, rather than from the declaration of independence.

Contrary to general expectation, but little resentment was shewn in England against these confederacies, and other associations, which followed many of the colonies. They were justified by a strong party in parliament; and a great part of the nation applauded them, as the genuine marks of a noble spirit of true patriotism and constitutional liberty. With such support, it will not be thought strange, if, in America, the friends to independence were elated, and the friends to government depressed. The game, which a few months before was thought very hazardous, now began to be considered as sure.

At this session of the assembly, an affair, which related altogether to the interior state of the province, afforded a new subject for controversy between the governor and the house of representatives. The several lieutenant-governors, from the date of the charter, in 1692, until the appointment of Mr. Phipps

1767 Phipps, in 1732, had sat in council as regularly as any of the members of council. Except in the case of Mr. Stoughton, they did not give their voice unless when they had been elected. Mr. Stoughton, the first year after the charter, was considered as a councillor *ex officio*, and voted, and was upon committees, the whole year. The next year he was elected one of the twenty-eight councillors. Povey succeeded him, and though it does not appear that he voted in council, having never been elected, yet he was very constant in attending. Tailer and Dummer, the other two, attended in like manner. Phipps was appointed contrary to governor Belcher's mind, he having prayed for the appointment of Adam Winthrop, esq. Mr. Belcher was, besides, fond of power, and took upon him to forbid Mr. Phipps to sit in council, unless he should be elected by the assembly, and approved by the governor*.

Lieutenant-governor Hutchinson had been every year, until the present, elected for the council. The first session of the assembly, this year, he attended frequently, but did not vote, nor take any share in the debates. The governor desired that he would accompany him in his coach, the first day of the next session, and, after the governor had delivered

* It was intended that the lieutenant-governor should be of the council, by virtue of his office. The deputy governor and secretary, under the former charter, had always acted as assistants or councillors. Mr. Stoughton would not have taken his seat the first year, if the charter had not, by the agents who solicited it, and who were then in the province, been so understood. It not being clearly expressed, and he being a favourite of the assembly, the two reasons might concur in causing him to be elected the next year. This construction is corroborated by the minutes of the board of trade of August 20, 1691. "The lieutenant or deputy governor, during the residence of the governor within the colony, to have the first place in the council, and, at all times, to have a vote there, and in the assembly, as the assistants." By the assembly must be meant the council in its legislative capacity. The charter passed the seals soon after this minute, October 7th, 1691.

his

his speech, they left the council together. In the 1767 speech the governor had recommended "the support of the authority of government, and the maintenance of the honour of the province." The house, in their answer to the speech, take notice of the lieutenant-governor's appearing in council, and remarked, that, "if the honourable gentleman was introduced by your excellency, we apprehend that the happiest means of supporting the authority of the government, or maintaining the honour of the province, were not consulted therein. But, if he came in and took a seat of his own motion, we are constrained to say that it affords a new and additional instance of ambition and a lust of power to what we have heretofore observed."

This was illiberal treatment of the lieutenant-governor, and brought into the speech by Mr. Hawley, a lawyer of distinguished character in the county of Hampshire, but of very strong resentment. He thought he had not been properly treated by the lieutenant-governor as chief-justice in the court of common law, and, to revenge himself, brought this publick abuse against him in the assembly.

The governor directed the secretary to search the books for precedents, and caused his report to be laid before the house, accompanied with a message. The house, thereupon, came into a resolve that, by charter *, the lieutenant-governor has no right to sit

* The words of the charter are, "From henceforth for ever, there shall be one governor; one lieutenant or deputy-governor, and one secretary of our said province or territory, to be from time to time appointed and commissioned by us, our heirs and successors, and eight and twenty assistants or councillors, to be advising and assisting to the governor; which said councillors, or assistants, are to be constituted, elected, and chosen in such form and manner as hereafter in these presents is expressed." By a contemporaneous construction of this paragraph, favoured by the practice under the former charter, the lieutenant-governor and secretary were admitted to a seat with the twenty-eight assistants, or councillors. But the second year, both were elected, with only twenty-six others, as assistants.

in

1767 in council when he is not elected. As it was not advisable to lay claim to a right of voting in council after it had been so long dormant, it was a dispute *de lanā caprinā*, but had a tendency, notwithstanding, to alienate the other branches from the governor, at a time when union and harmony were more than ever to be desired. The lieutenant-governor therefore signified, by a letter to the governor, his determination to absent himself from the council-chamber, that he might not be the occasion of any controversy between the governor and the house of representatives, presuming that this act could not be any prejudice to the future claim of a lieutenant-governor, or to the right of the governor and council to admit the lieutenant-governor when they thought proper. This letter the governor thought fit to lay before the house, and to desire that the dispute might subside without prejudice to the right in question. This did not satisfy the house. The governor had repeatedly recommended to the council to take the matter under their consideration, but a majority wished to avoid any share in the controversy. Upon a message from the house, they so far concerned themselves, as to resolve unanimously, that "the lieutenant-governor, by charter, has not any constitutional right to a seat at the board, either with or without a voice; but so far as precedents, and one contemporaneous with the charter, can justify, he is excusable in taking his seat at the time referred to." Still this did not satisfy, and the house, in a further message to the council, insisted, that, as they had denied the constitutional right of the lieutenant-governor to a seat in council, they must mean that his conduct could not be excused*.

This

* The governor was fully persuaded that both lieutenant-governor and secretary were designed by the charter to be of the council, and

This answered the purpose of the first mover in 1767 this business. The house was brought to a publick accusation of the lieutenant-governor. Such, however, was the inconsistency of conduct, that, a few days after this charge of ambition and lust of power, which had special reference to the several posts he sustained, the same house of representatives, in conjunction with the council, added another, though temporary, yet very important post, by electing him the first of three commissioners empowered to adjust and settle a controversy long subsisting between the two provinces of Massachusetts Bay and New York, respecting their boundary lines. This was the more observable, because it had long been the practice, with scarcely an instance to the contrary, to confer such places on such only as were members of one or other of the houses of assembly.

At the close of this session, after the speech to both houses and the prorogation, the governor addressed himself to the council separately, the house being dismissed, cautioning them to be upon their guard against the encroachments begun by the house, some of which had been submitted to, signifying his own resolution not to invade the rights of the people on the one hand, nor to suffer an invasion upon the prerogative of the crown on the other.

and that Mr. Mather, the agent, who was consulted in framing the charter, had fixed upon the number twenty-eight, in imitation of Lycurgus' senators, who were of a like number, and being added to the two kings, who only retained a voice with the other senators, made up thirty. He sent a representation of the affair to the earl of Shelburne, then secretary of state. His lordship expressed his concern at the warmth discovered by the house of representatives, his sense of the utility and propriety of admitting the lieutenant-governor to be present at the deliberations of the council, his favourable opinion of the person at that time lieutenant-governor; but, after all, supposed the council to have the best right to determine whom they would admit to be present at their deliberations. This was a sudden opinion. If the charter gave a right, the council could not have a right to determine against it.

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1767 This was unusual, and passed without any return. He found in the past year the want of that support which he used to receive from the council, and was anxious, if possible, that some of the persons who had been left out might be restored.

Previous to the election for the next year, he caused an accommodation to be proposed to the leading members of the house, and offered, that if they would join in the election of the lieutenant-governor, and any other, more or less, of the non-elected councillors of the last year, he would approve of an equal number of those whom he had disapproved. This they would not hearken to. As the council then stood, they were sure of a majority. They had rather their friends should remain excluded, than run any risk of turning the balance against them. Besides, most, if not all, of the negatived councillors had acquired seats in the house, and would be serviceable there. The house carried their point*, and the six who had been negatived were re-elected. He again rejected five of them, and accepted one, Mr. Sparhawk, for which he gave this reason to his friends, that he had behaved with more decency than the rest.

The session passed without any thing remarkable. American affairs were under the consideration of parliament. It was rumoured, that it had been at first designed to suspend the legislative power of Massachusetts Bay, in like manner with that of New York; but as the offence of the former consisted in words only, the same provision for the troops which the mutiny act required having been made in another way, the design was laid aside.

Soon after the session of the assembly, accounts were received from England, that two acts of parlia-

* A struggle was made for the lieutenant-governor, and his election was lost by three votes only, one hundred and forty-one being the whole number, and sixty-eight in his favour.

ment

ment had passed relative to America, and each of 1767 them was said to afford fresh cause of complaint.

America was in such a state, that it seems to have been good policy to abstain wholly from further taxes of any kind. But if it should be otherwise determined, it was of the greatest importance to provide, at all events, for effectually enforcing the payment of such taxes. A second repeal, caused by the refusal of the subjects to submit to the authority of the laws, must greatly facilitate the accomplishment of the designs of those persons who appeared to be aiming at independency.

It was thought necessary to free the civil officers in the colonies from the restraint they had been under, by means of their dependence upon the assemblies there for their support. It was at the same time thought reasonable, that the charge of supporting such officers should be borne by the colonies. It had been allowed by Mr. Pitt, who had contributed much to the repeal of the stamp act, that parliament had clear authority to impose external, though not internal taxes. It was therefore determined, to lay small duties on paper, glass, and painters' colours imported into America; to take off 12*d.*, which had been charged in England on every pound of tea exported, and to lay 3*d.* only, payable upon its importation into America.

If these duties had been paid upon exportation from England, and applied to the purpose proposed, there would not have been any opposition made to the act. It would have been a favour to the colonies. The saving upon tea would have been more than the whole paid upon the other articles. The consumer in America would have paid the duty, just as much as if it had been charged upon importation. But, unfortunately, government in England too easily presumed, that Mr. Pitt's distinction between internal and external taxes would be favourably received in America; and relied upon a quiet sub-

1767 mission to the act. The prevalence of illicit trade in the colonies suggested further provision to prevent it, by the appointment of commissioners of the customs in America, with like powers to those of the commissioners in England. Disputes, also, which had been brought from America to be determined in England, might be determined by this new board in America, with much less trouble and expense to the parties. These were the motives to the second act complained of.

The first act was excepted to, as being, in effect, equally grievous with the stamp act. The distinction between internal and external taxes had been suffered to pass without remarks, because it had been held by the friends of the colonies to serve their cause. There was no essential difference between them. There might be some reason assigned for a duty, where commerce could not be regulated in any other way; but there could be no reason given for a duty, merely to raise a revenue. This was the language in America. The alarm, however, was not equal to that caused by the stamp act. It was said there would be no occasion for a violent opposition to this act. Its execution might be defeated in a better way. There was no necessity for importing any of the dutied articles from England; and measures must be come into for preventing such importation.

There seemed at first some prospect that the other act, appointing commissioners, would meet with no great opposition. Mr. Otis, in a speech at a town meeting of the inhabitants of Boston, had endeavoured to reconcile the people to it; and, when he was charged with being a friend to the act, he vindicated himself in print, and observed, that "if the name and office of a commissioner-general imports no more than that of a surveyor-general, no man of sense will contend about a name—the tax

tax*—the tax is, undoubtedly, at present, the apparent 1767 matter of grievance." And the tax, accordingly, was soon connected with the act appointing commissioners; and the people were taught to believe, that the purpose of appointing commissioners in America was merely to enforce the payment of duties laid for raising a revenue; although no powers were given to these commissioners, with which the commissioners of the customs in England, who deputed their surveyors general in America, were not vested before the act passed.

It was whispered about, that the commissioners would not be suffered to land; but it had been determined that there should be no mobs or riots. It was supposed that the merchants and manufacturers in England had been alarmed with the American

* Experience shews, that, next to acts of government which restrain men from liberty of conscience, (which, it can never be supposed, was intended, by any compact whatever, to be submitted to the supreme authority,) acts affecting property (which must always be submitted to the supreme authority, for publick use and benefit, or the ends of government cannot be answered,) have a tendency to disturb the minds of the people. Henry Cromwell, in a letter to Thurlow, made this very sensible observation, when Oliver was projecting taxes on the people of Ireland: "Errors in raising money are the compendious ways to raise a general discontent, for whereas other things are but the concerns of some, this is of all; wherefore I hope God, in his mercy, will not lead us into temptation."

For these reasons, or other reasons of policy, parliament, though it has not renounced a right to impose taxes upon any part of the empire, has in some cases thought fit to forbear doing it upon parts not represented, or having no share in the election of members. This is the case of Ireland at this day. This was the case of Wales after its submission, until represented. In other matters the legislative power was exercised over both these countries, whenever it was judged necessary. And if the claim made by Massachusetts Bay to a representation in parliament had been continued, probably it would have been acceded to, or taxes would have been forborne. But the claim had been scarcely made, before it was withdrawn, and publicly renounced in most of the colonies, and by the first convention in 1765 at New York.

associations

1767 associations to import no goods from England, and to encourage the manufactures of America; and that this alarm had caused them to petition for the repeal of the stamp act*. The like associations would probably have the like effect upon the other acts. The first step was a town meeting in Boston †. It was unanimously resolved, "by all prudent and legal measures, to encourage the produce and manufactures of the province; to lessen the use of superfluities; to refrain from purchasing a great number of articles particularly specified, some not being of necessary use, and others being procurable of the manufacture of America, though, perhaps, at a higher price than such as were imported; to adhere to former agreements respecting funerals, and to purchase no new clothes for mourning." Committees were appointed to take the subscriptions of the inhabitants to an engagement to conform to these resolves; the representatives were instructed to use their endeavours that the plan of the town might be adopted by the general assembly; and application was made to the governor, that the assembly might be convened at the time to which it then stood prorogued.

The new duties took place the 20th of November. The governor did not approve of the repeated applications of the town of Boston, that the assembly should meet at such time as they pointed out. He knew the special reason of the application was an expectation of some advantage from the assembly sitting before the duties took place. He had also written to the secretary of state, that it would not sit until the middle of January, and, upon the whole, refused to comply with the desire of the town;

* Some, indeed, imagined that the merchants and manufacturers were stirred up by agents of the ministry, in order to facilitate the repeal.

† October 28th, 1767.

though

though he then flattered himself, that there was 1767
more appearance of tranquillity than there had been
for some time before, and wished to gratify the
people, as far as regularly he might be allowed to
do it.

It happened that none of the duties were 1768
imported before the assembly met *. The commis-
sioners of the customs had arrived in Boston †, and
had held their boards there. The governor left the
assembly to go on with the ordinary business of the
province. A month passed without any mention, in
the journal of the house, or in any other way, of the
controversy concerning the authority of parliament ;
and the governor was so much pleased with their
moderation, that he made a favourable mention of
it, in a letter to the secretary of state ‡. He was
obliged, soon after, to transmit a very different
account. A vessel, arriving from England, brought
the answer to the letters which he had written after
the last election of councillors. Lord Shelburne
approved of the governor's conduct in negating the
councillors, passed a censure upon the conduct of
the house in general, and of several members by
name in particular.

This letter the governor thought proper to be laid
before the council. One of the council advised him
to communicate it to the house. He objected to
laying a copy of it before the house, lest it should
appear on their journals, or be published in the news-
papers. It was then advised, that the secretary
should read the letter to the house, and return it to
the governor. This was unusual, but the governor
consented. The speaker applied to him for a copy

* December 30th, 1767. † November 5th, 1767.

‡ Much use has been made of this letter, and it has been often
urged, in the controversy with the colonies, that their moderation
has been acknowledged by governor Bernard himself.

1768 of the letter, which was given upon this condition, that no other copies should be taken from it. The councillors who had been negatived, and other members of the house referred to in the letter, were very angry. The secretary of state must have received the knowledge he had acquired, of the characters of such members, from the governor. Some days were spent in debate, before the house, by a message, desired the governor to communicate to them copies of his letters referred to in his letter to lord Shelburne. He gave them for answer, that he had no copies of those letters, which could be of any use to them. This brought from them a very rough message, in which they charge him with misrepresenting the characters of several of their members. And a letter was prepared, and ordered to be signed by the speaker in the name of the house, and sent to the secretary of state, praying his lordship to give orders, that copies of the governor's letters referred to be transmitted and laid before the house, that they might have the opportunity of vindicating themselves and their constituents.

They proceeded to such vindication, in the mean time, as far as they were able without the letters, by a publick declaration, "that the non-election of several gentlemen, of distinguished characters and stations, was, by no means, the effect of party prejudice, private resentment, or motives still more blameable, but the result of calm deliberation; that, if the province had been misrepresented by any persons in publick stations, the house flattered themselves, that the removal of such persons would render the people happy in the esteem of the parent country, and much more so in the smiles of the best of kings."

The governor sent the secretary to the speaker of the house, to desire a copy of the letter. Formerly, the proceedings in the house, and council, lay open to the inspection of each other, and both were always open

open to the governor; and this was said to be parliamentary. For many years after the house began to print their journals, as soon as a sheet was out of the press, it was laid before the governor. After some altercation upon the manner in which the governor applied for the letter, it was resolved, that he should be served with a copy of it. This was a technical expression at all times, used by the house to give notice of a petition presented to them, to which any person was to make answer. And by a message to the governor, they repeated their desire, that he would give them a copy of his letters. In this message, they recited a great part of lord Shelburne's letter, which the governor had trusted with them in confidence that no copy should be taken; and they caused, or suffered, the message to be printed in the publick newspapers. This could not be excused. He took, however, no other notice of this proceeding, than, by a message, to let them know that, as they had suffered part of lord Shelburne's letter to be printed, he would hold them under no restrictions as to the remainder. At the time when, from the silence of the house in the beginning of the session, the governor judged that they were disposed to reconciliation, their committees were diligently employed in preparing letters to the marquis of Rockingham, the earl of Chatham, the earl of Shelburne, the earl Camden, and Mr. secretary Conway, to intreat their interest in promoting the repeal of the late duties. An address to the king was also prepared and agreed to by the house, accompanied with a letter and instructions to their agent in England, copies of all which they resolved * should be sent, in a circular letter, to the several

* When the question was first put in the house for sending circular letters to the other assemblies, it did not obtain. It was common, though unparliamentary, to reconsider votes in the same session, and, upon such reconsideration, it was carried. They had a rule

1768 several assemblies on the continent, desiring that they would severally take such constitutional measures thereupon as they should judge most proper. This proceeding was deemed in England highly exceptionable; and it brought on consequences which much accelerated the complete revolt of the colonies.

When the house had completed their plan, they sent a message to the governor, to acquaint him with their proceedings; a copy of all which they were ready to lay before him, if he desired it.

He closed the session with a speech, in which he censured the house, or rather those members by whom the house had been influenced, in much sharper language than he had ever used before; but it gave them no concern, seeing it increased, rather than lessened, their popularity.

While the assembly was sitting, a most abusive piece against the governor was published in the Boston gazette. The council took notice of it, and advised the governor to lay it before the two houses, by a message. The council, in their address, pronounced it a scandalous libel upon the governor. The house was of opinion, that, as no particular person, publick or private, was named, it could not affect the majesty of the king, the dignity of the government, the honour of the general court, nor the true interest of the province; and that it was not proper to take any notice of it.

The superior court was held soon after in the county of Suffolk. The chief justice, in his charge to the grand jury, mentioned this libel as an offence, of which, unless they departed from their oaths, they could not avoid making presentment. The attorney general laid a bill before them, upon which they re-

a rule, that no vote shall be reconsidered unless the house be as full as when the vote passed; but this was not always adhered to, though said to be on this occasion.

turned

turned "ignoramus," and thus gave a sanction to 1768 libels, which multiplied more than ever.

The spirit of liberty spread where it was not intended. The under graduates at Harvard college had been long used to make excuses for absence from prayers and college exercises; pretending detention at their chambers by their parents, or friends, who came to visit them. The tutors came into an agreement not to admit such excuses, unless the scholar came to the tutor, before prayers or college exercises, and obtained his leave to be absent. This gave such offence, that the scholars met in a body, under, and about a great tree, to which they gave the name of the tree of liberty! There, they came into several resolves in favour of liberty; one of them, that the rule or order of the tutors was *unconstitutional*. The windows of some of the tutors were broken soon after, by persons unknown. Several of the scholars were suspected, and examined. One of them falsely reported, that he had been confined without victuals or drink, in order to compel him to a confession; and another declared, that he had seen him under this confinement. This caused an attack upon the tutors, and brickbats were thrown into the room, where they had met together in the evening, through the windows. Three or four of the rioters were discovered, and expelled. The three junior classes went to the president, and desired to give up their chambers, and to leave the college. The fourth class, which was to remain but about three months, and then to be admitted to their degrees, applied to the president for a recommendation to the college in Connecticut, that they might be admitted there. The overseers of the college met on the occasion, and, by a vigorous exertion of the powers with which they were entrusted, strengthened the hands of the president and tutors, by confirming the expulsions, and declaring their resolution to support the subordinate government

1768 government of the college ; and the scholars were brought to a sense and acknowledgment of their fault, and a stop was put to the revolt.

The 18th of March, the anniversary of the repeal of the stamp act, threatened fresh disturbances in Boston. In the morning, two stuffed images, designed to represent one of the commissioners, and one of the inspectors of the customs, were hanging on liberty tree ; but two or three persons, who were known friends to liberty, took them down. In the evening, a great mob assembled, who made much tumult, and caused terror ; and, stopping before the province house, offered some abusive language to the governor, and dispersed.

No seizure of value had been made by the custom-house officers for some time. A cargo of Madeira wine was imported, landed in the night, and carted through the streets of the town of Boston, under a guard of thirty or forty stout fellows, armed with bludgeons ; and, though it was notorious to the greatest part of the town, no officer of the customs thought fit to attempt a seizure ; nor is it probable that he could have succeeded, if he had attempted it.

There had been no charge of any oppressive or severe acts of the commissioners. The people had not been accustomed to such formalities as were used at their board, and as are practised by the commissioners of the customs in London, attended by secretary, solicitor, inspectors, comptrollers, &c.

The first slight, or affront, shewn them, was by a company of cadets, first raised by governor Burnet, and continued from that time, as a guard to the governor. It being thought probable, that an invitation would be given by the governor to the commissioners, to dine with him and the council upon the day of election of councillors, this company passed a vote, that they would not appear, to attend the governor, if such invitation should be given. The
affront

affront was greater to the governor than to the 1768 commissioners; but such was the state of the province, that he did not think it advisable to shew that resentment which otherwise he would have done.

A few weeks after, a seizure was made in Boston, which brought on a riot, and put the town into such disorder, that the commissioners apprehended their persons and families to be in danger, and withdrew from the town to the castle.

The act of parliament, which imposed a duty of seven pounds per tun on wines from Madeira, &c., was in force at the time when the stamp act passed; and the duties had been generally paid. In all the stir against the stamp act, this, being less grievous, was not mentioned. Several cargoes were, soon after, smuggled in without payment of the duty; and it seemed probable, that there would either be a connivance by the custom-house officers, as had been in the case of the sixpenny molasses duty; or, otherwise, that great disturbance must be caused by seizures. The commissioners determined there should be no connivance; and required their officers to do their duty at all events. A vessel was expected from Madeira, belonging to a principal merchant, who was also one of the representatives of Boston*. Besides the cargo belonging to the owner, there were wines on freight for several gentlemen in town, designed for their own use; but it had been the practice at the custom-house for the masters of all vessels, and not the consignees of the goods, to make an entry, upon oath, of their whole cargoes, as well that part upon freight, as that which belonged to the owners. Before the vessel arrived, it had been frequently mentioned, that the duties would not be paid; and it was expected that an open refusal would be made. An entry was, however,

* Mr. Hancock.

1768 made at the custom-house, upon oath, of four or five pipes only, as the whole cargo. This was as much a submission to the authority of the act, as if the whole cargo had been entered. The remainder was landed in the night, or evening; and the wines on freight were sent to the owners, and no duty demanded. All this was the publick talk of the town, and became a common topick. Several days passed, and the vessel which imported the wines had taken on board a quantity of oil and tar, as if it had been laden for another voyage.

The custom-house officers, thereupon, seized the vessel, for the false entry made by the master, and the goods on board, for want of a permit from the custom-house. This was about, or near, sunset, when many people, who had left their work, were upon the wharfs. The officers, fearing an attempt to rescue the vessel, made a signal to the Romney man of war, which lay at a small distance from the shore, and a boat, with armed men, came to their aid. To prevent a rescue, the vessel was taken from the wharf into the harbour, and anchored under the stern of the man of war. This removal * brought on, as was said, the disorder and riot which followed. A mixed multitude was soon gathered together. The officers were insulted. One of them had his

* The council, as well as the town of Boston, charged the custom-house officers with making the seizure towards evening, and with the removal of the vessel, as unusual, if not illegal measures, and thereby irritating the people. Goods seized were always removed immediately; and care had always been taken for the security of vessels against a rescue. The suggestion of illegality seems to have been made from inattention to the writ of assistance, which authorizes an officer to enter a house "in the day time only;" but breaches of the act of trade are more frequently committed in the night, than in the day; and vessels, as well as goods, had been more frequently seized in the night, than in the day; and in this case, though towards the evening, there could be no pretence, that it was in any respect more improper, than if it had been at noon.

sword

sword broken, and his clothes torn. The collector 1768 and comptroller were followed to their houses, and their windows were broken. A boat, belonging to the custom-house, was dragged in triumph through the streets of the town, and burnt on the Common. This was on Friday evening *. Saturday and Sunday passed in quiet. On Monday morning, notifications were posted up, requesting the sons of liberty to meet the next day at Liberty Hall. Vast numbers of the populace, and others, met at the time and place, and chose the senior select man of the town their moderator, and then adjourned to Faneuil Hall, where it was proposed to have a "legal" meeting. This was agreed to, and notice given by posting up a warrant, signed by the select men, notifying the inhabitants to meet at three o'clock of the same day. The concourse then was so great, that they were obliged to adjourn to the largest meeting house, where Mr. Otis was their moderator.

The Romney had arrived from Halifax, a few days before the seizure. It was suggested, that she had been sent in consequence of an application from the commissioners. Being short of her complement of men, several seamen had been pressed from vessels, upon their arrival. The commissioners, before the meeting, had gone with their families on board the Romney.

It was supposed that the seizure of the vessel from Madeira, and the consequent disorders in the town, would be the principal business of this meeting. An address to the governor was agreed upon, and said to have been unanimously voted by this vast concourse of the people. A committee, consisting of twenty-one persons, Mr. Tyler, one of the council, being at their head, were appointed to wait on the governor with the address. No direct notice was

* June 10th, 1768.

1768 taken of the seizure, or the riot. The addressers complain*, that taxes had been imposed on them without their consent; that they had remonstrated against them; that dutiful petitions had been preferred to their most gracious sovereign; that they had waited, with great attention to the publick peace, to receive a gracious answer, until they found themselves invaded with an armed force, seizing, impressing, and imprisoning their fellow subjects, contrary to express acts of parliament†. To contend with the parent state was dreadful. To relinquish all the security for life and property, "without one struggle," was so humiliating, and base, that they could not bear the reflection. It was in his power, and, they hoped, inclination, to prevent that distressed, and justly incensed people, from effecting too much, and from the shame of attempting too little.

In the conclusion of the address, which seems to point out the way, they desired him to issue his order to the commander of his majesty's ship Romney, to remove the ship from the harbour, till they shall be informed of the success of their applications. The board of customs, they observed, had, of their own motion, relinquished the exercise of their commission, and they hoped would never resume it.

The governor was struck with the strong insinua-

* Appendix J.

† This address was probably drawn, it was at least approved, by Mr. Otis, who was a lawyer of note. The act of parliament referred to is that of the 6th of Queen Anne, chap. 37. Two very eminent lawyers in England, Sir Dudley Ryder and Sir John Strange, had given their opinions, that this act of parliament was not in force on the 17th of July, 1740, having expired at the end of Queen Anne's war.

Sir Edward Northey, also, had given his opinion, in February 1715, that the act was temporary, and intended to continue only during that war.

tion

tion of the consequences which would attend his 1768 refusal to comply with the prayer of this address. The council and house were sitting, but he was afraid that, by consulting them, he should increase his difficulty. The same men who had led this assembly were the men of greatest influence in the general assembly. His answer, though it contained a refusal to comply with their request to order a ship, which was not subject to his direction, out of the harbour, yet did not discover his sense of the unwarrantableness of their proceedings, as it undoubtedly would have done, if he could have been assisted by the other powers of government.

At this town meeting, instructions* were given to their representatives, and immediately published in the newspapers, in which they declare "a reverence and due subordination to the British parliament, as the supreme legislative, *in all cases of necessity for the preservation of the whole empire* †."

It must be supposed, that the town intended the world should know that they acknowledged no greater degree of subordination. The governor, nevertheless, for representing the men who led the people to the declarations contained both in their address to him and in their instructions to the representatives, as aiming at independency, has been charged with misrepresentation, in order to bring a military force into the province.

The commissioners of the customs removed from the man of war to the castle, and determined to hold their board there, until they should receive orders from England. Mr. Temple did not remove with the rest, but occasionally attended at the board. Having been surveyor general, a place which he

* Appendix K.

† This is a singular manner of expressing the authority of parliament.

1768 esteemed beyond that of a commissioner, it was supposed that the constituting of such a board was not what he sought, or wished for, and the people were not so much offended with him, as with his brethren.

The general assembly had met on the last Wednesday in May, for the election of councillors. The governor still strove to obtain a council less disposed to a compliance with the opposition to him. The lieutenant-governor's friends made another, and their last attempt to bring him in. By the charter, eighteen must be inhabitants, or proprietors of land within the old colony of Massachusetts Bay. These are first voted for, the whole number in one list, and, according to many years' usage, each must have a majority of the votes of the whole number of voters. Seventeen only had the majority. The lieutenant-governor came the nearest to it of any of the other persons voted for; and, if the rule which had been observed under the old charter, and for many years under the new, that the eighteen who had the greatest number of votes should be deemed duly elected, he would have been regularly chosen. As he wanted only three votes of a majority, it was supposed that, at the next trial, he would be chosen. This alarmed the heads of the opposition, and one of the Boston representatives declared, that he knew the lieutenant-governor, as chief justice, either had received, or had it in his power to receive, a salary from the crown; and he took it for granted that the house would not think a pensioner of the crown a fit person to sit in council. This turned some who had voted for the lieutenant-governor, and gave a majority of votes to Mr. Ward*.

The assembly sat spectators of the tumultuous

* He was afterwards commander-in-chief of the newly raised forces in Massachusetts Bay, &c., and was succeeded by Mr. Washington.

assemblies

assemblies in the town of Boston, without giving 1768 them any interruption. Before they were over, the governor sent a message to the house, which engaged the whole of their attention. In pursuance of instructions which he had received, he required them, in his majesty's name, to rescind the resolution of the last house of representatives, in consequence of which a circular letter had been sent to the several assemblies upon the continent, and he caused to be laid before them, part of a letter which he had received from the earl of Hillsborough, his majesty's principal secretary of state, lately established for the American department only.

The consequence of their refusal he did not mention to them, being willing that the requisition from the king should have its weight, without any menace in case they did not comply.

They had been informed that he had communicated to the council the letters he had received from the secretary of state; and they supposed that he had an instruction under the king's sign manual. Before they would act upon the requisition, they desired, in a message to him, that he would lay before them the whole of the letter from which he had made a partial extract; the king's instruction to him; and another letter from the earl of Hillsborough*, which he had communicated to the council; and that he would be pleased to add copies of letters which he had written to the secretary of state, upon the subject of his message.

* The affairs of the colonies becoming every day more important, it had been thought fit, at the close of the last year, to appoint a secretary of state for the American department, and the earl of Hillsborough, who some time before had been at the head of the board of trade, was nominated to this new office. The unprecedented measures of the house of representatives of the last year must have been one of the first affairs which came under his lordship's consideration.

1768 The remainder of the letter from which he had made the extract contained a peremptory order, in case of the refusal or neglect of the assembly, to dissolve them, and to transmit an account of their proceedings, to be laid before the parliament, if his majesty should think fit. This he thought proper to be communicated. The other letter, he did not. Instructions he had none, but what his letters contained. And, for his own letters, he assured the house he would never make them publick, but upon his own motion, when he should think there was reason for it. He recommended to them to complete a bill lying before them for relieving the people from part of a heavy tax, which must otherwise be levied that year; for, if he should dissolve the court, he should not think himself at liberty to call another, until he received the king's commands for that purpose.

Letters had been received from the assemblies of Virginia, New Jersey, Connecticut, and Georgia, approving the proceedings of the Massachusetts; and there was no doubt that the other assemblies, as they had opportunity, would express the like approbation. The strength, which would be derived from this union, confirmed many, who would otherwise have been wavering. Most of the present members were members the last year. They thought it humiliating to rescind their own act. An adherence was the most likely way to be popular, and to secure their seats in the house. The governor, therefore, had little or no room to expect a compliance. It was, however, a very serious affair. No man who had the interest of his country at heart could avoid anxiety. To men who preferred their own importance in the eyes of the people, to the true interests of the country, this must be a pleasing incident, and very proper for their purpose. Such there always have been in all governments.

The

The house kept the affair before them seven or eight days, without giving any answer. The governor then let them know, that he must look upon any longer delay as a refusal. This put them upon desiring an opportunity of consulting their towns. This, he informed them, would not consist with his instructions. They then, in a very full house, came into a resolve not to rescind, by a very great majority; ninety-two against seventeen.

This was a greater majority than was usual, when the question has turned merely upon parliamentary authority over the colonies. Other matter was joined to the vote. Many who voted against the resolution would not rescind it, because they would not be subject even to royal direction, in the character of members. The seventeen rescinders were against the resolution when it passed. If there had been no requisition, they would willingly have rescinded. They did not think they could justify a refusal to rescind, merely because the king required it. But though they could justify their conduct to their own consciences, they could not excuse it to the satisfaction of the people. The house ordered that the names, on both sides of the question, should be printed. One list was handed about with every expression of honour and applause; the other, like the list of the Straffordians in the last century, was hung up, in contempt and derision. The number 92 was auspicious, and 17 of ill omen, for many months after, not only in Massachusetts Bay, but in most of the colonies on the continent.

It requires no small degree of fortitude to stand against a popular torrent, when it runs with violence; but justice requires me to say more of the rescinders. They were men of very reputable
general

1768 general characters ; and most of them distinguished for their good sense, as well as integrity.

A message to the governor, and a long letter to the earl of Hillsborough, passed the house immediately after the question upon rescinding. Both had been prepared by a committee. The former was immediately presented to the governor, and he, as soon as it was read, ordered the assembly to be prorogued, and, by a proclamation, dated the next day, but not made publick till several days had passed, caused it to be dissolved.

It is difficult to discover, in any part of the governor's conduct in this affair, ground for the complaint of the people against him.

The instructions which he received were founded upon facts that were fully evidenced by the printed journals of the house of representatives. There was no occasion for private information. The measure, it was said, was suggested by him ; but it was said without any evidence, and against all probability ; for he must foresee that it would increase the difficulties of his administration. It could not be expected that he should disobey the king's instruction. The house, indeed, would consider the order as coming merely from the secretary of state. The governor knew, that the signification of his majesty's pleasure, by his secretary of state, was, in this case, as obligatory as if it had been under his sign manual.

And, for the execution of his order, it could not have been in a way more indulgent. His friends thought exception would be taken in England to his delay. He waited eight or nine days for an answer, which he might have expected in two or three. That the people might suffer as little as possible, he informed the house that he should not think himself at liberty to call another assembly
without

without leave from the king, and, therefore, recommended to them to complete such business as was then in their power. 1768

The clamour against him was as great, notwithstanding, as if all had been owing to him alone.

The governor was required by the king to afford the commissioners of the customs every protection in his power. He was censured, however, by the people, for receiving them and their families into the castle, and for allowing them the use of his own and the lieutenant-governor's apartments there. The garrison consisted of young men, whose parents or friends lived in the adjacent towns. The Romney, with a frigate and sloop, had changed their stations and removed near to the castle, that they might lie conveniently for guarding against any surprise. He was charged, in the newspapers, with a design to raise a groundless opinion with regard to the fidelity of the garrison, and the loyalty of the inhabitants, and to cause a pretence for sending troops to the province; and it was suggested, that, upon his application to general Gage, orders were gone to Halifax for one or more of the regiments there to remove to Boston.

He had often expressed his desire to live a more easy life, and repented his change of New Jersey for Massachusetts, though the former had less emolument than the latter; and he had written, desiring leave to go to England, hoping for a more easy government.

He was, at this time, alarmed with apprehensions of such a convulsion as would render it unsafe for him to remain in the province, and, as he was restrained from going to England, without leave, by heavy penalties, his intention was, upon any emergency, to have gone to Halifax, and there to have waited the king's pleasure.

The lieutenant-governor was absent upon the eastern

768 eastern circuit, the most distant from Boston. An express was sent* to acquaint him with the governor's opinion, that he ought not to be at so great a distance from the seat of government at so critical a time, and to desire his immediate return. The lieutenant-governor left the business of the court, and went to Boston. He was then of opinion, that the man must be mad who could meditate an attempt upon the castle. Such a step would never be taken, until the people were disposed effectually to prosecute a plan for independence, which he was sure the body of the people did not aim at, but would declare against, and he thought the clamour would subside. To have it known that he was sent for, would tend to increase it. He, therefore, wished to return immediately; to which the governor consented, and it was supposed that the lieutenant-governor's private affairs had called him to town.

There was no prospect of another meeting of the general assembly, for near a year. It must, by charter, be convened once in a year, for the election of councillors. This, an instruction from the king ought not to control. But it would be in the power of the governor, as soon as the election was finished, to prorogue the assembly, and prevent all other business. It was, therefore, said to be excusable, that, in other ways, the minds of the people collected together should be known, though perhaps, in ordinary times, not strictly regular.

A meeting of merchants in Boston was the first which was summoned. Such meetings had, for many years, been common, to consult upon particular matters respecting commerce, and more especially, while the paper medium of commerce was depreci-

* June 24th, 1768, publick notice having been given on that day to merchants, &c. to assemble on the 28th.

ating,

ating, to consult upon ways and means for obtaining 1768
a stable medium. But no persons were admitted,
except merchants; and nothing authoritative was
ever pretended to, nor were any compulsory mea-
sures ever proposed. Of late, other persons had
mixed with merchants; and Mr. Otis and Mr.
Adams, who had no concern with commerce, had
great influence among them.

The professed purpose of this meeting was to
prevent the importation of goods from Great Britain
until the grievances upon trade should be redressed.

Committees were appointed to carry about a
writing, purporting an engagement not to import
goods, which all persons were desired to subscribe.
The former subscriptions had been on condition that
other colonies would do the like, but this was abso-
lute. The committees were to correspond with com-
mittees in other colonies, and to urge that the same
subscription might be made there.

A mob gathered about the house of one of the
inspectors, who was absent from town when the
commissioners withdrew to the castle, and required
him to resign; which he refused, but promised to be
upon change the next day. Many people assembled
there, when he told them that he was ready to hear
what they had to say to him, but they dispersed
without any disturbance. Some applauded the in-
spector for his firmness, while others supposed the
whole to be a contrivance to bring an odium upon
the commissioners, who, it was said, if they had
remained, would have been in no more danger than
the inspector, who knew that he was safe enough.

The anniversary of the 14th of August, the day
on which the distributor of stamps had been com-
pelled to resign, was celebrated this year with great
parade.

A vast concourse of people assembled at Liberty
tree, and, after rejoicing there, a procession of two
or

1768 or three chariots, and fifty or sixty chaises, went from thence to Roxbury, to an entertainment provided for them. The select men and representatives of Boston made part of the company, with some who were immediate actors in the riot which they were celebrating, and that which next succeeded it*.

These are such unimportant occurrences in themselves, that a narrative of them would need an apology, if they did not tend to a more just idea of the progress of the American revolution.

By the July packet from England, general Gage, at New York, was directed to remove one or two of the regiments at Halifax, to Boston and to the castle. The withdrawing of the commissioners to the castle could not be known in England when these orders were given. The governor's enemies did not charge him with proposing the measure, but with making such representation of the disorderly state of the province as induced to it. He knew that nothing would more enrage the people against him than an application for troops.

General Gage had orders, several months before, to send them whenever the governor desired it. He enjoined the council secrecy upon their oaths, before he would acquaint them with these orders. When he asked their advice, whether he should apply for troops, they would not advise to it, and he would not apply without. These first troops were ordered by government in England, of their own mere motion. When the news arrived* of the seizure of the vessel from Madeira, the riot which ensued, and the withdrawing of the commissioners, they gave orders for two regiments more from Ireland.

An officer arriving in Boston the beginning of

* When the lieutenant-governor's house was destroyed.

† August 14th, 1768.

September, to provide quarters for the Halifax regi- 1768
ments, his business soon transpired. In the early
days of New England, a beacon with a large iron
skillet or frame, capable of containing a barrel, had
been fixed on the highest ground in Boston, to alarm
the country, whenever the ships of an enemy should
appear. An empty barrel was procured, and, being
filled with turpentine, was privately, by night, hoisted
up into this skillet. This, it was given out, was to be
fired when the fleet from Halifax should appear in
sight. There could not be a plainer insult upon the
governor's military authority, in a very essential
part of it. By the advice of council, the governor
sent for the select men of the town, and recom-
mended to them to cause the barrel to be removed.
Upon the news of the orders for regiments from
Halifax, the inhabitants of the town had been noti-
fied to assemble in town meeting. To this assem-
bly* the select men communicated the recom-
mendation of the governor, and desired their di-
rection. After debate, it was determined that no
question should be put upon the motion of the select
men. The council, thereupon, advised the governor
to direct the sheriff to cause the barrel to be forth-
with removed. The sheriff, in the most private
manner he could, executed his order, taking six or
seven men with him just at dinner time, and in
about ten minutes, luckily as he thought, effected
his purpose.

A committee from the town meeting waited on
the governor, praying that he would inform the
town, what grounds he had for intimations he had
given†, that three regiments may be daily expected,
two to be quartered in the town, and one at the
castle; and to desire him immediately to issue

* September 12th.

† The governor had mentioned it in private conversation.

1768 precepts for a general assembly, that such measures may be taken for the preservation of their invaluable civil and religious rights and privileges, now in a precarious situation, as they in their wisdom may think proper.

The governor informed them that the intelligence he had received was in a private way. When he should receive any publick letters, notifying the coming of such regiments, and desiring quarters for them, he should communicate them to the council. But as for calling an assembly, he could do nothing in it until he received his majesty's commands.

The latter part of the governor's answer was what every body expected ; but it was proper to obtain such an answer, to dispose the people of the province to choose members of an assembly, without his authority ; and the town thereupon determined, by circular letters, to invite all the other towns in the province to join in such measure.

As a proper introduction to the vote for that purpose, it was resolved, that levying money within the province, for the use and service of the crown, in any other manner than as granted by the great and general court or assembly, is a violation of the charter, and of the natural rights of the subject, &c. ; that raising, and keeping, a standing army in the town, without the consent of the inhabitants, in person, or by their representatives, would be an infringement of their natural, constitutional, and charter rights ; and to employ such an army, for enforcing laws made without the consent of the people, would be a grievance. It was then further resolved, that, as the people labour under many grievances, and as the governor has declared himself unable, at the request of the town, to call a general court, which is the assembly of the states of the province, for the redress of such grievances, the town will make choice of a suitable number of persons,

persons, to act for them as a committee in convention, with such as may be sent to join them from the several towns in the province, in order that such measures may be concerted and advised, as his majesty's service, and the peace and safety of his subjects in the province may require. 1768

The representatives of the town in the last assembly were chosen the committee for this convention. And the select men, by a vote of the town, were required to send a circular letter * to the select men of the several towns in the province, inviting them to join, and proposing the 22nd of September for the day of meeting at Boston.

It was then voted, that all the inhabitants who are not furnished with fire-arms, as there is a prevailing apprehension, in the minds of many, of an approaching war with France, be requested to furnish themselves, as the law requires, that they may be prepared in case of sudden danger.

And the concluding vote was a direction to the select men to desire the several ministers of the gospel in the town to set apart the next Tuesday as a day of fasting and prayer, to address the supreme ruler of the world, for that wisdom which is profitable to direct.

It must be allowed by all, that the proceedings of this meeting had a greater tendency towards a revolution in government, than any preceding measures in any of the colonies. The inhabitants of one town alone took upon them to convene an assembly from all the towns, that, in every thing but in name, would be a house of representatives; which, by the charter, the governor had the sole authority of convening.

The projectors of the plan depended upon their influence over this assembly, to keep it under such

* Appendix L.

1768 restraints as they judged proper; which judgment they should be better able to form, when the temper and general inclination of the people should appear at the time of the meeting. It was the talk among the inconsiderate part of the town, that the troops should never be suffered to land. The vote of the town, requesting the inhabitants to furnish themselves with fire-arms, was designed as a trial how they would receive an open proposal for opposition. The mention of a French war, which nobody thought probable, could not afford the thinnest covering to the real design. It was a bold attempt, and carried strong marks of that venturous spirit which has appeared in many of the stages of the American revolution. A great part of the people of the province received the account of it with concern, lest it should bring on the resentment of the kingdom, and the province should be considered as in a state of rebellion. That it was a high offence, was generally agreed. Some would make the act of the select men of Boston to be treason, and pains were taken to obtain, and preserve, some of the original letters signed by them. It was agreed, that the proceedings of the convention might aggravate the legal guilt of the promoters of it. About ninety towns, however, chose their committees. In many of them, those persons who had been representatives were willing to be excused on this occasion.

While the towns were choosing their committees, the governor was striving to obtain the advice of his council, to enable him to provide quarters for the troops, when they should arrive; both those from Halifax, and the two regiments from Ireland, of which, by a ship just arrived *, the governor had been advised. He laid the whole of his intelligence, together with the act of parliament, before the

* September 18th, 1768.

council.

council. As the mutiny act stood formerly, the civil 1768 officers had a general discretionary power of quartering troops in inns, livery stables, retailing houses, &c. Upon a motion in parliament, from a member who had been governor of one of the colonies, an alteration was made in the act. It was suggested, that in several colonies convenient barracks were provided, and that, until they were filled, the inhabitants ought not to be burdened. The civil officers of villages, townships, cities, districts, and places, were, therefore, required to quarter and billet the troops in the barracks, and if there should not be sufficient room in them, then, and in such case only, to quarter and billet the residue, in inns, livery stables, &c.; and if there should not be sufficient room in the barracks, inns, livery stables, &c., then, and in such case only, the governor and council were to authorize persons to take, upon hire, uninhabited houses for the residue.

The council gave their advice to the governor, to consult with the select men of the town of Boston. They declined any concern in the affair. The council then desired that they might give their advice, and the reasons for it, in writing; and he consented that they should. They did not deny the authority of the act, but insisted, that, in any colony where barracks are provided, no other quarters could be taken for them; and, as the barracks at Castle William would contain one thousand men, they would be sufficient for the two regiments first expected from Halifax; and, although general Gage had ordered one of those regiments to Boston, it was no disrespect to him, to say, that no order whatever, coming from a less authority than his majesty and parliament, can supersede an act of parliament. For the regiments which were to come from Ireland, no doubt provision would be made agreeably to the act.

The

1768 The governor endeavoured to convince the council, that such construction was never to be put upon any clause in an act of parliament, as would defeat the end and design for which the act was made.

If troops had been necessary to be posted in a frontier town of a colony, for its defence, it cannot be supposed, that, because there are barracks in another part of that colony, at a hundred miles distance, therefore no quarters shall be taken for those troops until the barracks are filled. The only rational construction is, that if there be barracks in the “place” where the troops are ordered, and, by lodging the troops there, the purposes for which the troops are ordered can be answered, no other quarters shall be taken, until such barracks are filled. One of these regiments is ordered to the town of Boston*, to aid the civil magistrate in preserving the peace and order of the town; the castle, where the barracks are, is an island three miles distant; it is another place, and the purpose of sending the troops cannot be answered if they are lodged there†. The council, however, adhered to their own sense of the act.

The convention met at the time and place proposed. The first day, it consisted of about seventy

* The council, in their defence, say to Lord Hillsborough: “When the troops are at quarters in the same *town*, where there are good barracks, these must be filled first.” The words of the act are villages, townships, cities, districts, *and places*. The castle was within the township, on a small island. The troops were ordered to the peninsula, on which the town was built. This was the *place* within which they were circumscribed. The letter of the act, as well as the spirit, required that the barracks should be within the *place*.

† The governor had before acquainted them that he believed the riots in the town had been the occasion of ordering troops. In their advice, they observe, that they are persuaded his majesty’s ministers could never have judged it necessary, or expedient, to send troops here, unless, in the representations made by some “ill-minded” persons from hence, those riots had been greatly exaggerated.

members

members, who chose Mr. Cushing, the speaker of 1768 the late house, their chairman.

Their first step was a petition to the governor, in which they disclaim any pretence to authoritative, or governmental, acts; and, after complaint, that the misrepresentations of the enemies of the province had incensed the nation to such a degree, that there was a general alarm lest a standing army should immediately be introduced among them, contrary, as they apprehended, to the bill of rights; that the dutiful and loyal address of the late house of representatives had not been allowed to reach the king*; and that the province never stood in greater need of a session of the general assembly; they pray, that he would cause an assembly immediately to be convened.

The governor refused to receive the petition, and gave as a reason, in a paper not signed, that by receiving a message from an assembly, called a committee of convention, he might be said to admit it

* A general opinion had taken place, that the petition, or address, from the house of representatives to the king, had been suppressed or stopped, by the secretary of state. Complaint thereof had been made, in a petition from the town of Boston to the governor, in a message to him from the house, in a circular letter from the select men of Boston to all the towns in the province, and in a letter to lord Hillsborough himself, from the house of representatives; besides repeated abuses of his lordship in the newspapers for suppressing it. At length, the following advertisement, which Mr. De Berdt, the agent of the house, was required to publish, appeared in the English papers.

“Whereas it has been publicly reported, that the earl of Hillsborough has neglected to deliver a petition from the assembly of Massachusetts Bay to his majesty, at a time when his lordship had not even seen the said petition, I think it my duty to inform the publick, that such insinuations are entirely groundless. My reasons for any delay and proceedings therewith, I have duly given to the assembly, in my letters to them of the 12th and 18th of March, and 27th of June.

“Dennis De Berdt.”

P

to

1768 to be a legal assembly, which he could not do by any means.

The next day he ordered the secretary to deliver to Mr. Cushing, a paper, directed to the gentlemen assembled at Faneuil Hall, under the name of a Committee of Convention, which paper he signed. He observed, that summoning such meeting was an offence of a very high nature, and that all who obeyed such summons were liable to penalties. Ignorance of law may excuse what is past. A step further will take away that plea. He admonished them instantly to separate, and threatened, if they refused, more publickly to assert the prerogative of the crown. He assured them that the king would maintain his entire sovereignty over the province, and that they who persisted in usurping the rights of it, would repent of their rashness.

The convention proceeded with less spirit than was expected. In a second address to the governor, they repeated their declaration that they did not assume any authority, and that, though the letter from the select men of Boston might give rise to their elections, they did not consider it as a *warrant* for their convening. The people who lived remote from Boston, the centre of intelligence, and whose occupations do not admit of much knowledge of publick affairs, are subjected to many misrepresentations, and their constituents thought such a convention nowise inconsistent with good order and regular government, to learn the certainty of the rumours prevailing among them, and to consult and advise upon measures to preserve peace, promote due submission, and, at the same time, in a dutiful, regular manner, to lay their grievances before the king, that they might obtain redress. They hope that the governor will be sparing of his powers. A suggestion that their proceedings are criminal
makes

makes them uneasy; not so much from a fear of 1768 personal punishment, as from a fixed aversion to any thing inconsistent with the dignity of their sovereign, &c.

This application he refused to receive, for the same reason that he had refused the former.

They then appointed nine of their number to prepare, what they called, the result of their conference, which was said to be unanimously agreed to. After a recital of their proceedings in order to obtain a general assembly, and an enumeration of grievances, they declare their own loyalty, and that of the people in general; and advise all, not in an authoritative, but friendly manner, to compose their minds, to avoid any undue expressions of resentment, and to prevent, as much as in them lies, all tumults and disorders; and they promise to yield every possible assistance to the civil magistrate in suppressing them, and are humbly of opinion that the "posse comitatús," legally called to aid the civil power, will ever be sufficient for that purpose. They conclude their result with expressing their dependence on the supreme Ruler of the world for influence and direction.

They brought into this result several expressions evidently intended as fleers upon the governor, who had been bred to the law, and practised many years with reputation, both in the temporal and spiritual courts. "Ignorance of the law*," they say, "neither in a court temporal or spiritual," is a proper plea, or excuse. They would appear not as "attorneys," "proctors," or "pettifoggers," but as plain honest men. These were expressions in their result, indecent and illiberal.

* This they marked with inverted commas, to shew the reference to the expression in his message.

1768 Seven or eight days were taken up without any other productions. While some feared, others hoped for much more serious consequences from this extraordinary assembly. Some supposed that they would have continued longer together, and have acted with more spirit, if the fleet and army had not been so near*; but this was conjecture. Others attributed the moderation and languor, which appeared throughout their proceedings, to the moderate principles of several members of weight and influence; who accepted their places with a view to restrain from excess.

The regiments from Halifax, with part of a regiment of artillery, in all about one thousand men, were landed in Boston without any opposition. The men of war were posted in a proper manner to cover their landing. One of the regiments pitched their tents on the common. Quarters for the other were demanded by lieutenant-colonel Dalrymple, in the name of, or by authority from, the governor, in a house called the manufactory house belonging to the province. The occupiers were prepared with an answer, and refused to open the doors. Application was then made to the select men for the rooms in Faneuil Hall, and the troops marched to it. Two or three hours were spent in altercation, when, by some means or other, one of the doors was opened without violence; and they were sheltered there for that night. The next day, the governor ordered the doors of the town house to be opened, except that of the council chamber; and such part were lodged there, as Faneuil Hall rooms would not accommodate. The representatives' room was filled, in common with

* The men of war and transports arrived in Nantasket the 28th of September. The convention broke up on the 29th.

the

the rest. There was great murmur and discontent, 1768 this being Sunday, and the house in the most public part of the town.

The next day, the commanding officer applied to the governor in council, for the articles required by act of parliament for troops in barracks.

Upon being informed, that opposition was threatened to his landing, he had altered the destination of that regiment which was intended for the castle, and encamped it in the town. The council objected to the provision for barrack articles, because the barracks at the castle were not filled as the act of parliament directed. The colonel took the liberty to say to the council, that no man out of the province of Massachusetts Bay would put the construction upon the act which they had done; that he would represent the affair to the general; and would also send an express to England, to give advice of their refusal. The council desired the governor to allow them a day or two to consider, and then they would give their answer in writing. This was a new practice. The publication of such writings made the council popular, and the governor unpopular. In their answer, they advise that the governor, agreeably to his own motion, should authorize a person to supply the troops with fire, candles, &c., as particularly mentioned in the act of parliament; but they add, what was not the governor's motion, and wholly frustrated the design of it, "provided such person will take the risk of being paid by the province (meaning the general assembly) such sums as may be expended for that purpose."

They take the opportunity of adding their opinion upon another subject, when the governor had not asked it. Colonel Dalrymple had suggested, that a bad spirit prevailed, which caused both regiments to be landed in the town. The council remark, that
"before

1768. "before this time, he must have had the fullest evidence that no such spirit is prevalent, and that the town is in a state perfectly peaceable and quiet; and they doubt not of his justice to represent it to the general accordingly, which they cannot but apprehend will procure from the general a recall of his last order, and that one, at least, of the regiments will be again ordered to Castle William; and that the same reason will induce the general to order the Irish regiments to Nova Scotia, or to some other parts where his majesty's service may require them."

No person would advance money for supplies to the barracks, and depend upon a reimbursement by the assembly. The commanding officer, therefore, hired barracks on the best terms he could, and purchased the necessary articles at the charge of the crown.

General Gage, being informed of these difficulties, came from New York to Boston before the arrival of the Irish regiments.

As soon as he came to town, the governor gave him an opportunity of being present in council, and of hearing, and, if he thought fit, answering their objections. The manufactory house was possessed by people without license; and being the property of the province, the care of it, where no provision had been made by the whole legislature to the contrary, was, constitutionally, with the governor and council. The council being pressed to advise the governor to order the removal of the occupiers of the house, and the necessary repairs to fit it for the troops, six, out of eleven, the number present, gave their voices for it; with this caution, "for such troops as cannot be accommodated in the barracks at Castle William, or otherwise agreeably to the act of parliament."

Though this caution seemed to maintain the construction they had before made of the act, yet it was
a clear

a clear acknowledgment of its authority ; and the 1768 people of the town, though they had been silent in a similar case before this, now expressed their dissatisfaction ; and the council were abused in the newspapers. Seven of the eleven who were in council when the vote passed, applied to the governor, and prayed him to suffer the advice to be withdrawn ; but he would not consent. In this state of things, the governor desired the lieutenant-governor, taking the sheriff with him, to advise the people in the house to quit it, and to let them know his opinion of the authority of the governor and council to dispose of it ; but they were prepared, and encouraged, by several of the first-rate sons of liberty, to refuse to quit the house. The sheriff, a day or two after, entered the house by surprise ; but the clamour was so great, that it was thought advisable for him to quit the possession.

Thus feeble and fluctuating were the powers of government, in all matters which concerned the authority of parliament.

No further attempts were made to carry the act into execution. The general found it necessary to hire houses for the troops, which were obtained with difficulty, and to procure the articles required by act of parliament at the charge of the crown.

As the governor was not permitted to convene the general assembly, the council seem to suppose it would be some justification of their acting without the governor, in matters which concerned the general interest of the province. Soon after general Gage came to town, fifteen of the council agreed upon an address to him ; the purport whereof was, to extenuate the riots which had induced government in England to order troops to Boston ; to appeal to his own observation that the town was in a peaceful state ; to accuse the commissioners of the customs of giving rise to the principal riot, and of unnecessarily

1768 sarily withdrawing to the castle, in order to induce a belief that they were in danger, and to procure troops for their protection. If, upon inquiry into these facts, he shall think his majesty's service does not require the two Halifax regiments to continue in town, it will be a great ease and satisfaction to the inhabitants, if he shall please to order them to Castle William, or Point Shirley; and also to order to the place where they were first intended, the two regiments from Ireland.

The general's answer was sensible and discreet. He assured them, that discipline and order would be preserved. He flattered himself that the future behaviour of the people would afford him a sufficient foundation to represent to his majesty the propriety of withdrawing the most part of the troops; that it would also be the best way of justifying the construction which the council put upon their past actions*.

The address and answer were published †; and the conduct of the council recommended them to the people. It is difficult, however, to vindicate their

* The two regiments, a part of Mackay's excepted, which, with the general, was driven to the West Indies, arrived in Boston, November 10th, before general Gage left the town. After necessary provision for their quarters at the charge of the crown, he went back, November 24th, to New York.

† There did not appear any dissatisfaction with the answer of the general; but the council, the next year, thought fit to republish the address and answer with the following note: "The foregoing address and answer were sent by general Gage to the earl of Hillsborough, as appears by his letter, dated at Boston, October 31st, 1768. This letter is totally destitute of the candour which people here had always connected with the general's character. At the date of it, he had been in town about a fortnight; in which time, from his own knowledge and observation, he could not gain such an acquaintance with the character and disposition of the council, and of the people in general, as to authorize him to say so many harsh things concerning them; which, at the same time, are as unjust, as they are harsh and precipitate," &c.

conduct

conduct, as a council constituted to advise and assist 1768 the governor, and for no other purpose. Their legislative capacity was at an end. No exception could have been taken to an address to the general, in their private capacity, as gentlemen of the town or province. But they address as members of his majesty's council, and declare, that their duty to the town and province requires them to make known the sentiments of the people to the general. In reality, they were counteracting the governor, not assisting or advising him. They also thought it incumbent on them to make a representation of the state of the province to government in England. The governor consented to their completing an address to the king, which they had begun in their legislative capacity*. Contrary to his injunctions, they repeatedly assembled, several months after the dissolution, and agreed upon addresses to the lords and to the commons. These were sent to Mr. Bollan, who was called their agent in England, to be presented. As such, they corresponded with him from time to time.

This opposition was not only displeasing and troublesome to the governor, but it contributed much to prejudice the people, in general, against him.

Thus the troops were landed and housed, contrary to the minds of the people in town, and province. On the other hand, the design of the act of parliament was utterly frustrated, by the refusal of the select men of Boston, and of the council, to comply with what the act enjoined them respectively to do.

Short quiet succeeded long disturbance. Troops at first carried terror. There had been no experience of them. The restraint they were under without a

* He insisted, that, as a privy council, they could do no act without the governor. He did not join with them in the address, but consented that they should do what he could not authorize them to do.

civil

1768 civil magistrate was not known to that part of the people most disposed to mobs and riots. Such as were better acquainted with it, seemed willing to hear how parliament would receive what was past. Since the last sessions, riotous opposition had been made to the laws of trade, and the commissioners of the customs, established by a late act of parliament, had withdrawn to the castle. The house of representatives had vindicated, instead of rescinding, the act of the house of the last year to obtain a confederacy of all the colonies against the authority of parliament. When the assembly had been dissolved by order from the king, a convention had been called, in the form of a house of representatives, which separated not till the day after a fleet and army arrived at the mouth of Boston harbour. The provision for quartering this army, required to be made by an act of parliament, had been refused or neglected, so far as the select men of Boston, and the council, were concerned in it. The council had in many instances separated themselves from the governor, to whom, it was intended, that by the constitution they should be inseparably united in all publick acts. All these proceedings must have been transmitted to the secretary of state by the governor, with his remarks upon them. They would undoubtedly come under consideration in parliament. For one of them only, a refusal to carry the act for quarters into execution, the legislative powers of New York assembly had been suspended. Something very serious was generally expected. And the king's speech, upon the meeting of parliament, which assembled earlier than usual, and before some of these facts could be known, accorded with this expectation.

The town of Boston was declared to be in a state of disorder and confusion; and their proceedings in town meetings to be illegal and unconstitutional, tending

tending to sedition and insurrection, and manifesting 1769
a design to set up a new and unconstitutional authority, independent of the crown of Great Britain. The commons, in their address, gave the strongest assurances, that they would zealously concur in measures for suppressing the daring spirit of disobedience, and enforcing a due submission to the laws; and both the lords and commons consider it as their duty, to maintain inviolate the supreme authority of the legislature of Great Britain over every part of the empire. Private letters from England mentioned a supposed plan of intended measures in parliament; that there should be a change in the constitution of the council, and that the members of the house of representatives should be elected by counties, and not towns; and that the chief promoters of the late measures should be apprehended, and carried to England for trial.

It is certain, that, at first, it was believed that parliament would proceed with vigour; and some, who were afraid of being accounted chief promoters, began to exculpate themselves, and to charge others.

As the town of Boston was charged in a peculiar manner, the first step, in consequence of this intelligence, was taken, not by the town, but by the select men in behalf of the town. In an address to the governor, they lament the state of the town, surrounded with ships of war, and filled with land forces, brought upon them, in their opinion, by a misapprehension in his majesty's ministers of the publick doings of the town, and the behaviour of particular inhabitants. The select men, therefore, as the servants of the town, desire the governor to communicate to them such representations, of facts only, as he had made for about fourteen months past, together with such representations as had been made by others, and had come to his knowledge,

1769 ledge, that the town might be able to vindicate itself.

This was a strange address ; and a remark upon the impropriety of it would of itself have been a sufficient answer. The governor, however, waved such remark, and let them know that he had reason to believe, that the king and his ministers formed their opinion from the transactions of the town, attested and published to the world ; and, if they could vindicate themselves from charges founded upon those transactions, he thought they had nothing to fear. At the same time, as a caution, he let them know that he confined his answer to that part of their address which respected the select men, or the town as a body.

Notwithstanding this caution, they, by a second address, express the greatest pleasure from his having vindicated the general character of the inhabitants as individuals ; and they infer, that he must be of opinion, if the town suffered on account of the riots in March and June by persons unknown, it must be owing to partial, or false representations to his majesty's ministers.

This was too trifling to deserve any answer at all. He thought fit, however, to observe, that he had confined his answer to them as select men, and to the town as a body ; and had no reference to the disorders in March or June, the acts of the inhabitants.

It was difficult to discover what advantage the select men could propose by their addresses ; but, when a town meeting was soon after convened for the choice of their town officers, it appeared that this refusal of the governor was to be a principal ground of an address from the town to the king, in which, among other things, they complain that he did not think proper to communicate to them the account of facts as he had stated them since the
com-

commencement of the last year, though their select 1769 men had respectfully petitioned him to do it; by which means they were kept in ignorance of the representation which had caused troops to be stationed in the body of the town, contrary, as they conceived, to the act of parliament for quartering troops; and therefore they pray, not only that the troops may be removed, but that his majesty would be pleased to order that the town might be favoured with governor Bernard's letters, the memorials of the commissioners of the customs, and other papers which affect their important interests; and that they may have notice of any matters brought against them, and have the justice of being heard by counsel.

Such an address the town voted to be sent to colonel Barré, to be presented to the king; and probably it was sent for that purpose, but the further progress of it was not made known.

Soon after these proceedings of the town, the resolves of the lords and commons, declaring their sense of the transactions in the town and province the year past, accompanied with an address to the king, to direct the governor to take the most effectual methods for procuring full information of all treasons, &c. committed within the government since the 30th of December, 1767, and to transmit the same, together with the names of the principal offenders, in order to his majesty's issuing a special commission for trying and determining such offences, within the realm, pursuant to the statute of Henry VIII., if there shall appear to his majesty sufficient ground for it, were brought to Boston in the publick prints.

There came, at the same time, many private letters from persons in England to the principal persons concerned in promoting the opposition to parliamentary

1769 } mentary authority, assuring them, that they need not be afraid of the statute of Henry VIII., which was held up *in terrorem* only, and which even the crown lawyers did not intend should be carried into execution. Indeed, it was a general opinion, that no vigorous measures were intended ; lenient healing measures were said to be the plan ; and it was agreed that the last act for duties on paper, &c. would be repealed, if not that session, certainly in the next.

This intelligence gave fresh spirits to the friends of liberty, and perplexed the friends of government, and especially the servants of the crown. Few, if any, of them had any share in advising, or promoting the measures of government in England, which the people pronounced grievous. They might even think them not founded in good policy. They were, notwithstanding, obliged to endeavour to effect the execution of them, so far as they were legal and constitutional.

Parliament claimed an entire sovereignty over all parts of the dominions. A great part of the people in the colonies objected to this entire sovereignty ; but they did not agree among themselves where a line to limit it could be drawn. Nobody then, openly, pretended a right to total independency.

It was expected that measures would be taken by parliament, for ascertaining and establishing its authority for the future. Resolves passed, that the execution of the laws had been obstructed, and the lives of the officers of his majesty's revenue endangered, by acts of violence in the town of Boston ; and that the civil magistrates did not exert their authority, in suppressing the riots and tumults, during which such acts of violence were committed ; that the appointment of a convention by the town, and the issuing of a precept by the select

select men of Boston, were acts subversive of his 1769 majesty's government, and evidently manifesting a design to usurp a new, unconstitutional, and independent authority.

The information given by the governor, of these facts, and of the authors and abettors, was ample. Hence, when it appeared in America that the degree of the offences was not more fully declared in parliament; that full information of treasons, &c., was still required; and that a prosecution was to go on, "if there should appear to be sufficient grounds," it was not expected any further notice would ever be taken. Accordingly there were no marks of any pains taken by the governor, or other persons, to obtain further information, and the statute of Henry VIII. became a subject of contempt and ridicule.

The servants of the crown, upon this, despaired of support, and many of them grew very cautious, lest they should incur the resentment of the people.

The feeble, ineffectual measures of administration for supporting the authority of government in England, as well as in the colonies, must be attributed to the spirit of party, which had been raging many years, and which the frequent changes in administration did not abate.

Upon the first advice of measures intended by parliament, there seemed to be a serious apprehension of the arrest of some of the persons who had been principal actors and abettors in the late transactions. There was no appearance of an intention forcibly to oppose such arrest. As soon as it appeared that all danger was over, lenity was construed into timidity; and so much strength was acquired by the friends of liberty, that, ever after, they appeared determined to risk any consequence, rather

1769 rather than suffer any person to be apprehended and carried out of the province, by any authority whatever.

✓ The discontent from quartering troops in the capital town, likewise, became, from day to day, more and more evident.

Little matters, being novelties, soon caused great uneasiness. Though the people had been used to answer to the call of the town watch in the night, yet they did not like to answer to the frequent calls of the centinels posted at the barracks, and at the gates of the principal officers, in different quarters of the town; and either a refusal to answer, or an answer accompanied with irritating language, endangered the peace of the town. The officers were extremely desirous of preserving it; and relaxed the rigid rules of the army; and, at most places, no challenge* was made.

Boston had always been remarkable for the strict observation of the Christian sabbath. The noise of drums and fifes, upon Sunday, was very displeasing. The select men applied to the general, and prayed him to dispense with the band. He thought that he could not justify a total omission; but he readily altered the time of relieving the guards for that day, so as that there might be no distur-

* A burglary having been committed near one of the places where a centinel was posted, it caused an examination of him before one of the justices of the town. Being asked whether he was upon guard at the time? he answered—yes. Whether he saw any person break into Mr. Gray's house?—Yes. Whether he said any thing to them?—No. Why he did not?—Because he had orders to challenge nobody. Whether he looked upon them to be thieves?—Yes. Why he did not make an alarm, and cause them to be secured?—Because he had orders to do nothing which might deprive any man of his liberty! This story was generally reported and believed, though probably invented for a pleasant amusement.

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bance to the religious assemblies, during the publick 1769 worship.

While the general and the officers under him were endeavouring to avoid, as far as possible, every occasion of disturbance between the inhabitants and the troops, great pains were taken by particular persons to render the troops as odious as possible, and to inflame the minds of the inhabitants against them. Nobody succeeded better than the author or authors of a weekly publication, called "The Journal of the Times," which was managed with great art, and little truth. Every little insignificant fact relative to the troops, which was not thought worthy of notice, or made no impression, if known, was preserved, and, after six or eight weeks, sent to New York to be published there, journal-wise, with glosses, exaggerations, and additional circumstances. From the New York newspapers they were transplanted into the Boston papers, and regularly published, when there was a general remembrance remaining of the fact, so as to make the aggravations more easily received. Many false reports, which had been confuted, were mixed with true reports, and some pretended facts of an enormous nature were published, of which so much as the rumour could not be remembered. This paper had a very great effect. A story of a fictitious quarrel incensed the lower part of the people, and brought on a real quarrel.

This lying for the sake of truth may as well be excused in the cause of liberty, as in that of religion, though, as has been long since observed, it is a scurvy trick at best.

Governor Bernard, in the month of April, 1769, received the king's order to leave his government, and return to England. The ostensible reason was that he might make report to the king of the state of the government. The recall, however, was con-

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sidered

1769 sidered by the people as a victory which they had gained, and as advised by the ministry because he was disagreeable to the people. It was said to be part of the plan of lenient measures beginning to be carried into execution.

He had obtained, the last year, leave to go home, if he found it necessary or expedient. But he had laid aside all thoughts of it, and had begun the settlement of the island of Mount Desert, granted to him by the province, and was making purchases in other parts, and providing for his posterity in America.

His conduct, in every respect, had met with the approbation of the king and his ministers, and in some instances it had been applauded by the opposition. The king, as a peculiar mark of favour, had conferred on him the dignity of a baronet, without any expense for the patent, and an order to quit his government could not, at any time, have been more unexpected by him. It might, however, be said to arrive very seasonably. He was just beginning to encounter new difficulties, greater than any he had met with before.

He had notice from a friend in London, that endeavours were making to obtain copies of his letters and papers, which, his friend said, had been called for in the house of commons, in order to their being sent to America, to raise the fury of the people against him. Copies had been denied, upon application made for them by Mr. Bollan, as agent for the council; and the governor encouraged himself, that care would be taken to prevent any copies from being delivered; but it seems that a member of the house has a right to copies of all papers, and, upon a demand made by alderman Beckford, they were delivered to him, and he delivered them to Mr. Bollan, who selected six, together with one from general Gage, and sent them over to the council.

They

They were received by one of the council in Boston, 1769 on a Saturday evening*. On Sunday, such of the council as lived in and near Boston assembled; which had never been known, except on a pressing occasion, which could not be deferred without great detriment to the publick.

The next day, the letters were printed and published.

They were all dated, except that from general Gage, between the 1st of November and the 5th of December, 1768, and contain an account of facts which occurred within that space, proper enough for him to communicate to the secretary of state. The proposals made by him, in consequence of those facts, were the most exceptionable parts of his letters, in the opinion of the people. He infers the necessity of the king's taking the council chamber into his own hands, or, in other words, of his appointing a royal council in the stead of that elected by the people; and of an act of parliament, to authorize the king to supersede all commissions which had been issued to improper persons.

He had been free enough in declaring his sentiments upon these points; and there was no room to doubt that he had expressed the same to the king's ministers. There seemed, therefore, to be no reason for a fresh clamour against him. And, indeed, it was the freedom he had used with the council which gave the most offence, and not only caused an irreconcilable alienation, but enraged a great part of the province, who considered the cause of the council as their own cause. He was charged with transmitting to the secretary of state every sudden, unguarded expression, dropped in debates, which, sometimes, were rather free and familiar conversation, than cautious and formal declarations of

* April 5th, 1769.

1769 opinion and advice; with accusing them of private animosities, perversions, duplicity, want of truth, justice, and humanity, as well as of a servile dependency upon the people. To all this it was added, that, by a false representation of facts, he had made their conduct appear culpable, and had been the means of exposing their names and characters, and placing them in an odious light before the parliament and the whole nation.

They undertook to answer these several letters, and to defend their conduct, in a very long letter to lord Hillsborough, in which they treat the governor's character with as great freedom as he had treated theirs. They charge him with want of candour, with indecent, illiberal, and most abusive treatment of them, with great malignity against them as a body and as individuals, with aiming at exorbitant and uncontrollable power, with a design to represent things in the worst light, with unmanly dissimulation, and with untruth.

✓ At the close of the letter, they say, "It is plain that the people of all ranks, orders, and conditions, (with but few exceptions,) have lost all confidence in governor Bernard, and he in them; and we most humbly submit to your lordship, whether his majesty's service can be carried on with advantage during his administration."

This letter was, no doubt, composed by Mr. Bowdoin, who had great influence in council, and who thought himself ill used by being named in one of the governor's letters, and pointed out in others. He undertook the defence of his particular conduct in another letter, signed only by himself, to the same noble lord, in which he modestly disclaimed the character of the leader of the council, as the governor had represented him to be.

The council made one observation, the truth of which could not be denied, that it had been the happiness

piness of his majesty's council, from the grant of the 1769 charter till lately, to be on good terms with the governor, and though there had been frequent disputes between the governor and the house of representatives, there had been none between the governor and the council. It did not, however, necessarily follow, that the governor was the culpable cause of the present dispute; nor did it follow, that the present council acted otherwise than their predecessors would have done, under the like circumstances. The times were altered. No governor, before Mr. Bernard, had been obliged to propose measures against which, not only the people of his own government, but of every other government on the continent, were united. It requires great fortitude to advise to, and assist in, carrying such measures into execution. Besides, before the reduction of Canada, which gave to the colonies a new idea of their power and importance, a dread of an exertion of the power of the kingdom in support of the supremacy of parliament, would have restrained the people from that opposition which, afterwards, they did not scruple to make; and the council would have had little to fear from their resentment. At this time they had much to fear. Governor Bernard, in one of his letters, says, that one of the council acknowledged, "that he did not now enter the council chamber with the free mind that he used to have." One * of the judges of the superior court made the like declaration in open court, in words somewhat varied, "that he was under duress." To this general alteration in the state of affairs, we may well enough attribute the opposition made by the council to the measures proposed by the governor; and any irregularities in the course of the controversy, on one side or the other, may be

* Peter Oliver, esq., afterwards chief justice.

charged

1769 charged to those frailties of human nature, which are more prevalent in political, than other disputes.

In the administration of Mr. Dudley, which began about ten years after the charter, he would have put his negative upon such councillors as he knew to be of improper principles to advise and assist the governor; and he would have required the assembly to proceed to the choice of other persons in their stead; and a refusal would have been pronounced by him, a non-user of the powers granted by charter: but the power of the house had been gradually increasing, and some parts of the prerogative, which had been disused, could not now be reassumed. The council, the last year, consisted of twenty-two members. If the governor should negative eight of them, it would reduce the council to fourteen. An opinion had prevailed, that in case the government should devolve upon the council, by the death or absence of both governor and lieutenant-governor, a less number than fifteen (the majority of twenty-eight) could not act as the governor; and one branch of the legislature would be wanting. In the disordered state of the province, it was not thought advisable to irritate the people to the degree that this exertion of power would have done.

Previous to the election of councillors for the year 1769, the election of representatives for the several towns shewed the sense of the people. It was very uncommon for so few new members to be elected. Where there was a change, it was generally against government. Eighty-one of the ninety-two non-rescinders were re-elected; and it shewed an unexpected degree of firmness in five towns*, which resisted the general torrent, and chose five rescinders out of the seventeen, the rest having lost their elections.

* Springfield, Hatfield, Hardwicke, Harwich, and Sheffield.

Many

Many towns gave instructions to their representatives to support the cause of liberty in which the people had engaged. Boston required their representatives to make the removal of the main guard the first object of their attention. This, without any design to give offence, had, unluckily, been stationed in a house which was before unoccupied, opposite to the door of the court-house ; and, as is usual, some small field pieces were placed before the door of the guard-house, and thus happened to point to the door of the court-house.

An unfortunate accident, about this time, contributed also to increase the discontented state of mind in the people. A brigantine, belonging to Marblehead, had been boarded, as she was coming in from Europe, six or seven leagues from land, by a boat from the *Rose* man of war, the Boston station ship, then cruising in order to impress seamen. The lieutenant of the *Rose* was killed, and four of the crew belonging to the brigantine were apprehended in order to a trial before a special court of vice-admiralty, consisting of crown officers, which court had always proceeded without a jury ; but exception was now taken, and a jury was insisted upon by Mr. Otis and Mr. Adams, the counsel for the seamen, and the matter was in agitation when the assembly met for election*.

But

* The seamen had shut themselves up in the fore peak, and had furnished themselves with harpoons, and other weapons, but no fire arms, and swore they would die before they would be taken, and that they preferred death to slavery. After a long defence, and after one of the seamen had been shot through the arm, the lieutenant, though he had been threatened with death if he advanced an inch, stepped forward and was struck dead with a harpoon, which cut the jugular vein. The men were afterwards taken by an additional force from the man of war.

The authority for the court of admiralty, for trial of piracy and felony upon the high seas, was derived from acts of parliament in the

1769 But nothing gave such spirit to the supporters of the cause of liberty, as the intelligence received from

the reign of William III. and George I., and murder, being felony, was supposed to be cognizable by force of those acts. All the commissions in pursuance of them directed that the proceedings should be without a jury.

It was now started, that the trial ought to be by jury; that the acts would admit of it; and that, in order to deprive the subject of his birthright, the privilege of being tried by a jury, the words ought to be express, and such as would admit of no other construction; and it was alleged, that, under these acts, Stede Bonnet had been tried by a jury in South Carolina, in the year 1718.

The governor was inclined to favour the claim, which he never would have been able to justify. The point had been under consideration of the judges or commissioners upon a consultation before the court was opened in form. Upon opening the court, the governor, as president, observed, that the commissioners were disposed, if it might be done consistently with law, that the prisoners should be tried by a jury; that they would take under consideration the several statutes, and their commission, and for that purpose would adjourn a few days. Upon a hearing by counsel for the king and for the prisoners, the counsel for the king acceded to a trial by jury, and the only point remaining was the manner of summoning grand and petit jurors. While this was under consideration, the chief justice, who is in the commission, and who looked upon the decision to be directly against law, drew up a statement of the case, in which it appeared, that the prisoners might be sent to England and tried there; in which case the trial must be upon the statute of Henry VIII., which directs a trial by jury. Or they might be tried in the plantations; but the trial there, must be according to the directions of the statute of William, without a jury. The design of the statute of William was to prevent the trial of piracies by a jury in the plantations, at a time when the verdicts of juries had been very partial in some of them, and the bucaniers or pirates had been acquitted of many acts of piracy committed against the Spaniards, Moors, &c.; and the subsequent statutes of George were perfectly consistent with this construction of the statute of William. This statement being laid before the commissioners, they were unanimously of opinion to proceed without a jury; and the chief justice was desired, in open court, to declare the grounds of their decision. It was, however, displeasing. But as the prisoners were all acquitted, it had less effect. It appeared that neither the lieutenant nor any of his superior officers were authorized to impress, by any warrant or special authority from the lords of the admiralty;

from New York, and from Virginia, of the zealous 1769 attachment of the people in both those colonies, and the measures taken in consequence of it: the first, giving an account of the violence used in compelling all persons to conform to the non-importation agreement at New York; the other, of sundry very high resolutions, and an address to the king, corresponding with them, from the house of burgesses of the colony of Virginia. Had the resolves and address been framed by the leaders in Massachusetts Bay, they could not have been better adapted to vindicate the past proceedings there, and to encourage a perseverance*.

It had been the practice of the members of the house, as soon as the oaths were administered, to bring in their votes for a clerk, which being counted by some person or persons called upon and acquiesced in for that purpose, and the choice declared, an oath was then administered by a justice of peace, to the faithful discharge of his trust; the clerk received the votes for a speaker, and declared the choice. Until this was done, and the speaker approved, they did not consider themselves formed into a house, or capable of any act. But upon this extraordinary occasion, the members, as soon as they were sworn, found a way to appoint a committee to prepare and bring in a message to the governor, remonstrating against the breach of their privileges, and praying that he would give orders for removing the standing army, the main guard whereof was kept with cannon pointed at the very door of the state-house.

admiralty; and the court (the commanding officer of the king's ships being one of the commissioners) was unanimously of opinion that the prisoners had a good right to defend themselves, and, though the fact of killing was fully proved, that they ought to be acquitted of murder, with which they were charged, and that, at common law, the killing would not have amounted to manslaughter.

* Appendix M.

The

1769 The message*, which must have been prepared before the members assembled, was soon reported by Mr. Otis, chairman of the committee, accepted, and presented.

The governor received the message, which he said he would consider as from the house, and send an answer when a speaker should be chosen, and in the chair. This was a bad precedent, and could have no more tendency to soften them, than a refusal to receive it on the ground of irregularity in presenting it, and of their styling themselves a house, before they were formed. This seems to have encouraged them to go on with the irregularity, and to pass several resolutions for asserting their privileges, with a protest to shew that their doing any business was from necessity, the charter having pointed out that day for elections, and was not a receding from their claim.

They then proceeded to choose their clerk, and also their speaker, who was accepted by the governor.

The election of councillors was such as was generally expected. Four of the last year's council, who were nearly the whole that had not joined in the opposition to the governor, were left out †. The newly elected were all of them strongly attached to the cause of liberty. The governor disapproved of eleven. Two ‡ of them, only, had been of the council the last year. Four § had been repeatedly disapproved, and the other five || had not been before elected.

In

* Appendix N.

† Thomas Flucker, Nathaniel Roper, Timothy Paine, and John Worthington.

‡ William Brattle and James Bowdoin.

§ James Otis, Jerathmeel Bowers, Joseph Gerrish, and Thomas Saunders.

|| John Hancock, Artemas Ward, Benjamin Greenleaf, Joshua Henshaw

In a short speech, the governor recommended 1769 early attention to the general business of the province, observing that the service of the crown and the interest of the people are objects very compatible, and in all measures consistent with both he would readily concur.

After twelve or thirteen days spent in meetings and adjournments, declining to do any other business than what related to the regulation of the house, and in the preparation of a message to the governor, they agreed upon such message, the purport of it being an answer to his declaration, that he had no authority over the ships and troops; the house being humbly of opinion, that he had as full and ample authority as the lord-lieutenant had in Ireland. They allow, that, "to destine fleets and armies to any part of the world, where they may be necessary for the defence and preservation of the society, belongs to the crown;" but add, that "it is impossible to believe that a standing army,—stationed here, in consequence of misrepresentations,—quartered contrary to act of parliament,—accompanied with every mark of contempt, reproach, and insult,—can be uncontrollable by the supreme executive of the province; which, within the limits of the same, is the just and full representative of the supreme executive of the whole empire. It is obvious," they say, "that the doctrine which the governor had advanced, involves them in that state which is called by the learned, *imperium*

Henshaw, and Walter Spooner. Such was the religious zeal of the New England rulers in the last century, that three of the people called quakers were banished for venting their opinions, and afterwards, for returning into the colony, were put to death. Many were fined, whipped, or imprisoned. Two of the councillors elected this year were in profession quakers, and attended publick worship with them; Mr. Bowers, and Mr. Spooner. One of the common scruples of the profession, an oath, they found a salvo for. The stricter part of the quakers in the province did not approve of it.

in

1769 *in imperio*, or, at least, establishes a military power, uncontrollable by any civil power in the province."

They conclude with observing, that, "if no redress can be had from the king's lieutenant in the province, nothing remains but that the oppressed people unite in laying their fervent and humble petition before their gracious sovereign."

This was one of the most perplexed and indifferent performances that came from the house in their controversy with governor Bernard. He observed to them, in a message two days after, that notwithstanding their doubts and difficulties, it was certain, that he had no authority to remove the ships or troops, and the only means, in his power, to put an end to the difficulty, was by moving the assembly to a place where it must cease: and he, thereupon, directed the secretary to adjourn them to Cambridge.

The authority of the governor to hold an assembly, without their consent, in any other town than Boston, had been disputed in governor Burnet's time, though submitted to. The revival of this dispute would probably terminate in a prorogation, or dissolution; and so prevent a representation which was intended against the governor, and likewise other measures resolved upon for promoting the cause in which this and the other colonies were engaged. It would also prevent the supply of the treasury, and the provision necessary for easing the inhabitants from a very heavy tax laid on this year, by continuing a great proportion of it to future years.

The governor had no interest to induce him to keep the assembly sitting. It was, indeed, the usual time for granting a salary to the governor for the year ensuing; but it was well known, that he would leave the province as soon as the session was over, and preparations were actually making for his departure. The king's instruction supposed that his salary would go on, whenever he should be absent
with

with leave, and in that case one half was to be allowed the lieutenant-governor; but the house never paid any regard to this instruction, and there was not the least probability of it at this time. 1769

The objection to going to business in Boston, while the troops were in the town, being removed, it was resolved, among the first acts of the house at Cambridge, that the proceeding to business, while a military force for the purpose of aiding the civil authority, is quartered within the colony and declared to be uncontrollable by his majesty's lieutenant, is from *necessity*, and not to be considered as a precedent at any time hereafter.

The council, having, at the desire of the house, laid before them copies of the letters from the governor and the general to the earl of Hillsborough, and the consequent proceedings of the council, a resolve passed, expressing "the high satisfaction of the house in the zeal and attention of the late council to the publick interest, not only in vindicating their own characters, but in guarding their country from meditated ruin, by truly stating facts, and justly representing the duty and loyalty of the people, at so critical a time, when the governor of the province had wantonly dissolved the general assembly, and arbitrarily refused to call another, upon the repeated, dutiful petitions of the people."

The council, before the removal of the assembly from Boston, had unanimously voted another long letter to the earl of Hillsborough, which was signed by Mr. Danforth, as president, in behalf of the council, in which they declare their approbation of the measures of the majority of the council of the last year, and desire his lordship's indulgence, again to animadvert with freedom upon some parts of the governor's letters. The letter carries the marks of the same pen which wrote the former letter to lord Hillsborough the last year, the governor's negative
not

1769 not having lessened the esteem of the council for the writer, nor prevented their being frequently assisted by him.

The house, soon after, by an unanimous vote when one hundred and nine members were present, resolved to prefer their humble and loyal petition to the king, praying that he would be graciously pleased to remove Sir Francis Bernard from the government of the province for reasons to be mentioned.

The reasons assigned in the petition for this removal were such as, they must know, would not be considered as reasons by the king, or such as it was not in their power to support by evidence. It is plain they never intended to support them, nor was any evidence ever transmitted to their agent for that purpose.

The petition, therefore, could be of no service to them in England. It might increase the clamour against him in the province, but, as he was to leave it in a short time, and it was not probable he would ever return, this could not give him much concern. It could, therefore, afford those who were most incensed against him but a very slight revenge, and of short continuance. On the other hand it must cast an unfavourable imputation upon them, for bringing an accusation against their ruler, when they were unable to support it. A consciousness of inability seems to have prevented any such attempt.

✓ In the midst of this persecution, the governor afforded them a fresh pretence for shewing their resentment against him. He acquainted them with the king's order to him to repair to Great Britain, to lay before his majesty the state of the province; that, as he was made to understand, he was to be continued in office, and that he was instructed how the salary to the governor was to be appropriated in his absence, one half being to be paid to the lieutenant-governor; and he desired that the grant might be made,

made, and was content that it should be subject to 1769
the appropriation. His friends advised him not to
make the demand. They were well assured the
house would make no grant: he would receive new
affront and indignity. Upon desiring to see the king's
instruction, it was laid before the house. They then
let the governor know, in a message to him, that they
"cheerfully" acquiesced in the command of their so-
vereign for his repair to Great Britain, and the order
for a true statement of the affairs of the province gave
them peculiar satisfaction; for they have abundant
reason to be assured, that, when the king should be
acquainted with the great and alarming grievances,
the injuries in reputation and every important inte-
rest which his subjects had suffered, through the
governor's administration, he would frown upon, and
remove, all who had attempted to deceive his majesty
by wickedly misinforming his ministers. The go-
vernor was best acquainted himself with the part he
had acted; his letters enabled the house and the
publick in some measure to form a judgment. While
he should be employed in setting his own conduct
in the most favourable light, they were persuaded
that they should be able to answer for themselves
and their constituents, to the satisfaction of their
sovereign, whenever they should be called to it.
They had not been "made to understand" that he
would be continued governor of the province after
his expected departure from it; nor could they, in
faithfulness to their constituents, grant money for
services they had no reason to expect would ever be
performed. He would please to remember that he
was fully paid to the second of August next, before
which time he would embark; then they would make
provision "for the support of the dignity of the
government," and, when his majesty shall be gra-
ciously pleased to appoint another governor, they
trusted the people would be ready to grant him an
ample

1769 ample salary. His majesty's instruction was a rule for the governor, but, as they conceived, was not intended for the house of representatives.

This answer was just what his friends had predicted. The reproaches and taunts gratified such persons as were vindictively disposed, so far as they mortified the governor; but the reasons given for not complying with his demand were not of sufficient weight. Nothing appeared, to give ground to a suggestion that he would not return. His service might be necessary in England, as governor of the province. It appeared that the king thought it so; but, to avoid the increase of burden upon the people, had directed, that he should receive one half of the salary only during his absence, and that the other half should be paid to the lieutenant-governor.

There was no avoiding abuse but by a dissolution or prorogation of the assembly; and, as he had no longer room to hope for any advantage from their continuing to sit, he would have prorogued them immediately, but they had postponed the proper publick business of the province, though he had put them in mind of their neglect. They relied upon his unwillingness to give any colour for charging upon himself the mischiefs which must be the consequence of the assembly's rising, and leaving this business unfinished. They, therefore, ventured still to postpone it; and the principal matters, the supply of the treasury, and the tax, were kept off until the day before the session ended. In the mean time, they went on, as they judged convenient, with other matters, which appeared to them of great importance.

A committee of the house for considering the state of the province, reported a set of resolves, which were unanimously accepted by the house, when one hundred and seven members were present; and, three days after, they were published in several of the newspapers, and were said to have been sent to

to the printer's by the clerk of the house. In one 1769 of them was more fully expressed, than had ever been before, the sense of the house, that "no laws," made by any authority in which the people had not their representatives, could be obligatory upon them.

At the same time that the resolves appeared in print, a report prevailed, that circular letters had been sent to every assembly on the continent, to desire their concurrence.

Several months had passed, after the arrival of the troops in Boston, without any riots or tumults. This was said to verify what the council and representatives had alleged, that the town had been abused; small tumults, to which the inhabitants were provoked, had been exaggerated, in order to bring troops, but the officers of those troops could not help being convinced of the orderly state of the town. It was hoped that two of the regiments, at least, would be removed. The inclinations of the commanding officers coincided with the desires of the people. It was not an agreeable station, when the king's service did not make it necessary. Upon a representation made to the ministry, the 64th and 65th regiments were ordered to Halifax, and the colonels had leave to go to Europe. Before the orders arrived, frays were frequent between the inhabitants and the troops. It was soon found, that prosecutions of soldiers for a breach of law were as easily carried on as against any other persons; and that all reports against them more easily obtained credit. It was urged, however, that the soldiers were made the occasions of frays, but could be of no service in suppressing them. No civil magistrate would ever call for their aid, to preserve or restore the peace. They could be of use only in case of an open revolt, of which there was not any danger. It was therefore determined to remove the two regiments. One had sailed, and the other was embarking, when the

R

resolves

1769 resolves appeared in print, on Monday, the 3rd of July.

General Mackay, the colonel of the other regiment, was alarmed with this resolve, and with the expectation that all other assemblies would follow the example. Upon consultation with the governor, and Mr. Hood, the commander-in-chief of his majesty's ships, it was determined to put a stop to the embarkation of the regiment, and an express was sent to general Gage, at New York, for his directions.

This caused an uneasiness in the town, as soon as it was known. The printer had set the press for the resolves in the Thursday's newspapers, but was directed to stop the publication. It was said, the resolves, though passed unanimously, had been ordered to lie on the table, and that the publication was premature. An express was sent to overtake and recall the other, or to acquaint the general that the difficulty was removed. The house, upon revision, thought fit to alter the resolve, from laws in general, to laws imposing taxes, and they were republished in that form*. The ships with the regiment sailed soon after for Halifax.

The house, by a general vote, had declared their approbation of the proceedings of the council upon the governor's letters; but, not thinking that sufficient, in these resolves they expressly charge him with false and injurious representations of the council, the magistrates, the overseers of the poor, and other inhabitants; and with "perfidiously" representing, that it was necessary that the king should have the council chamber in his own hands, while he was professing himself a warm friend to the charter.

The governor of new Hampshire coming into the province, to be present as one of the commissioners at the special court of admiralty, he was invited to

* Appendix O.

an entertainment, made on his account at Cambridge*, 1769 by one of the councillors who had just before been negatived. The council, in a body, assuming another character which they sustained, of overseers of the college, waited on him with their congratulations. The house of representatives appointed a committee of nine of their members, Mr. Otis at their head, to acquaint him, that the house would be glad of an opportunity of waiting on him, and shewing him the respect which was due to his station and merit. The speaker presented each member to him by name.

The motive to this display of their regard appeared in the next newspapers, where the governor of New Hampshire is styled "the worthy representative of his majesty, and a favourite of the people;" and a remark follows, that, "however the people of this province may have been represented as inimical to any who may chance to wear his majesty's commission, the world, in this instance, may be clearly convinced, that the spirit of disgust arises, not from the commission with which our most gracious sovereign thinks it fit to honour any of his subjects, but from the dislike to those whose deportment is unworthy the royal favour."

A short time after, the same influence produced the like slight from the select men of the town of Boston. There had always been an annual visitation of the schools, and it had been the general practice to desire the governor to honour the visitation with his company. The invitation of the general and commanding officer of the troops in the town, and of the commanding officer of the ships, rendered the slight upon the governor more conspicuous. The first excused himself, but the other attended at the ceremony †.

One

* June 22nd.

† July 5th. At this entertainment, some of the representatives
R 2 of

1769. One affair remained for the consideration of the house, which had been kept back by the governor, for he expected the proceedings upon it would oblige him abruptly to prorogue, if not dissolve, the assembly.

Agreeably to the advice of council, he had appointed an officer to furnish and supply the barracks in Boston, according to act of parliament. Colonel Robertson, the barrack master at New York, came to Boston, and made what, in his letter to the governor, he called a "demand" of reimbursement. The officer, not choosing to risk the supplies in confidence of being repaid by the assembly, had been authorized to make them by the barrack master. The general had also desired the governor to make a requisition of provision from the assembly, for further quartering the forces in the town of Boston, and at Castle Island.

Upon these letters the governor founded a message to the house. They assigned the afternoon of the same day they received it for its consideration ; but it does not appear, by their journals, to have been considered then, or at any other time for six or seven days. The governor, thereupon, thought fit to intimate to them, that the session was near to a conclusion, and to desire an answer to his message, and that they would be very explicit, to prevent mistakes.

Upon this message, they resolved, that all private business should subside, and that the house would proceed to the publick business of the session.

Having completed their supply and tax bills, and

of the town being present, the commander of the king's ships expressed to them his surprise at the denial of the authority of parliament in all cases, and declared that instead of removing the ships he would order more. The publication intended on the 6th was stopped, and on the 7th the resolve was reconsidered by the house.

made

made choice of an agent for the province*, and 1769
settled his instructions, they passed on the report of
a com-

* The affair of the agency passed without any notice from the governor. He could have interfered to purpose, in no other way than by putting an end to the session. It gave his successor, however, a great deal of trouble. It occasioned an instruction not to consent to any grant for the pay of the agents of the house or of the council. His refusal, though in observance of his instruction, unreasonably brought against him the resentment of an agent of the house, and probably excited to the procuring and sending to the province, in the manner they were sent, of those private letters, which were perverted to set the province in a flame.

Until within about two years before this time, there had been an agent in England, without interruption, from the date of the charter, who, being appointed by the three branches of the legislature, was the legal representative of the body corporate. In this session, the house, intending that Mr. Bowdoin should be the man, if the governor would consent to him, passed a vote which appointed a time for the two houses to join in the choice of an agent, who was to be a person, as the vote expressed it, "on this side the water." The council, though they and the house intended the same person, made an amendment by leaving the choice at large, and the house concurred with the amendment. Before the time for the choice arrived, doubts had arisen in the minds of the leaders of the house. It was not improbable that the governor would consent to the choice. He wished to meet his antagonist before a committee of council, and to have the fullest evidence which could be exhibited, of all the facts alleged against him, enforced by the most able hands. The choice was deferred until the next day. When the council proposed to the house to join, they answered that they were not ready; and assigned no other time, but would give the council notice. Two or three other attempts were made in the house to bring on the choice, but failed of a vote. At length it was resolved by the house to proceed (without the council) to choose an agent to appear at the court of Great Britain, in behalf of the province, for the space of one year.

Of this vote the council, as well as the governor, had cause to complain. If it be allowed that there are cases in which the house of representatives have a right to appoint an agent to appear in behalf of the house; surely, while the constitution continued, they had no right to appoint an agent "in behalf of the province." Besides, this was assuming more than the law would allow to any one of them separately. In their natural capacity, they could not any of them separately have given power to an attorney, for a longer term than their natural lives. There seems to be the same reason, that, in their political capacity, their attorney should continue no longer

1769 a committee appointed to prepare an answer to the two messages from the governor, which, as appears

longer than their political existence, which must have ceased in nine or ten months, by the charter, and might cease at any time the governor should think fit.

There seems to have been less propriety in the proceedings of the council. When the house acted separately, they determined to do the like, and chose an agent also for any matters in England, which might concern the council, "*or the whole province.*" Thus there were to be two province agents; one, subject to instructions from the council, and the other, from the house. The council, to free themselves from one impropriety, ran into a greater. To avoid that of acting as a privy council, they passed a vote, constituting the whole council a committee to prepare such instructions to the agent as they should think fit in the recess of the court. This was authorizing acts of council in their legislative capacity, after that capacity ceased. The appointment in this manner seems, at first, not to have been attended to at the boards in England. After some time, the agents, both of the house and council, when they claimed a right to be acknowledged as such, were told that their appointments were irregular, and the governor was instructed to withhold his assent from any grants for their salaries. They certainly tended to raise and keep up contention. If that ceased, the agent became of no importance.

The petition for governor Bernard's removal was sent to the agent of the house of representatives, Mr. De Berdt. What instructions he had is not known. A committee was appointed to prepare the evidence to support the facts charged against the governor. The petition was duly presented, and an answer was given to each of the articles by the governor, and a time appointed for a hearing before the lords' committee of the privy council. The agent was not furnished with evidence to support the facts, and endeavoured to keep off the consideration of the petition. After several months waiting for evidence, it was brought to a hearing, February 28th, 1770, when the governor attended with evidence to support the allegations in his answer. But the agent declined proceeding, and no proof having been made of any of the articles of complaint, the lords thought it unnecessary for the governor to justify himself, by evidence, against a charge wholly unsupported. It appeared by Mr. De Berdt's acknowledgment to the committee, that, about six months before the hearing, and at other times, he wrote to the speaker of the house of representatives, to send him over the necessary proofs and documents, but that he had never received any answer whatever relative thereto, notwithstanding sundry letters had passed from the speaker to him, bringing answers to other matters contained in the

pears by their journal, was unanimously accepted, 1769 when eighty-three members were present. The house in this answer, after complaining of the delay of his message for five or six weeks of the session, and of his then sending them a *quicken*ing message; and after expressing their astonishment at the use of the word *demand* by the barrack master, when the desires of majesty itself for aid had ever been intimated to them with royal clemency and great condescension, in the form only of a *requisition**; they observe that their publick proceedings will sufficiently evince to the world, and to posterity, the idea they entertain of the introduction of a fleet and army, and the circumstances which attended it; that, had such fleet and army been necessary, the support thereof, from the nature of a free constitution, should be only by aids voluntarily granted by the *commons*; that, by the act of parliament alluded to by the governor as law; the monies expended for the enumerated articles are required to be raised in like manner as other publick charges are raised in the province; that no money had been raised, nor funds provided; and that the governor and council had unwarrantably drawn money out of the treasury, when it had not been appropriated for that purpose.

They then remark upon the acts of parliament for

the same letters in which he had written for the documents. This neglect the lords considered to proceed from a view of keeping up a spirit of clamour and discontent in the province. For these reasons, and forasmuch as several of the articles of complaint could not affect the governor, but were rather a charge against his majesty's government, their lordships determined to proceed and declare their opinions upon the whole, that "the several charges were groundless, vexatious, and scandalous, and that the petition ought to be dismissed." This report being laid before his majesty in council, the petition was dismissed accordingly.

* Requisition was one of Mr. Pitt's favourite words. It is not likely that he did not intend more by it than request or petition. He rather intended to require, as signifying demand.

imposing

1769 imposing taxes, &c., which, they say, in strictness ought rather to be called acts for raising a tribute in America for the further purposes of dissipation among placemen and pensioners; and add, that, of all of them, the stamp act not excepted, the act under consideration is the most excessively unreasonable; concluding, at length, in these strong words, "If we are free judges, we are at liberty to follow the dictates of our own understanding, without regard to the mandates of another; much less can we be free judges, if we are but blindly to give as much of our own and of our constituents' substance as may be commanded, or thought fit to be expended, by those we know not. Your excellency must, therefore, excuse us in this express declaration, *that, as we cannot, consistently with our honour, or our interest, and much less with the duty we owe our constituents, so we shall never make provision for the purposes in the several messages above mentioned.*"

The session had continued three weeks longer than usual, owing, if the governor's opinion declared in his speech at the close of it was well founded, to their putting a stop to all real business, upon the most trifling pretences, and endeavouring, by all means they could, to oblige him, in the course of his duty, to put an abrupt end to the session before they had permitted even the necessary business of the province to be brought before them.

He closed his speech and took a final leave of them, by referring to the king, and, if he pleased, to his parliament, their invasion of the rights of the imperial sovereignty; and by observing, that by their acts they would be judged. They did not need to be apprehensive of misrepresentations, for it was not in the power of their enemies, if they had any, to add to their own publications, which were plain and explicit, and wanted no comment.

He thought it more advisable to prorogue the
assembly

assembly for a long term*, than to dissolve it. If 1769 it should be thought proper, there would be time enough for the king to order a dissolution, before it could be again regularly convened.

Thus ended the controversy between governor Bernard and the assembly, within the colony. No governor had ever been treated with so much bitterness. It was his misfortune, that, both in the council and in the house, the gentlemen who were principally employed in framing all the messages and other publick papers which respected him, had very strong resentment against him. The unanimity, however, which appeared in some of the acts of the house, and particularly the petition to the king for his removal, can be in no other way accounted for, than by supposing that some of the members, who, out of the house, continued to express their good opinion of him, either absented themselves on such occasions, or had not firmness enough to expose themselves to the abuse which they must have expected, if they had voted according to their judgments.

The unanimity of the council must be accounted for in the same way. Several of them professed a great esteem for him, who had nevertheless been induced to give their voices for a new letter, to be sent this session to the earl of Hillsborough, though altogether unnecessary, after the council of the last year had undertaken their own defence. In this letter they charge him with wanton exercise of power, —with sparing no pains to vilify the council,—with gross misrepresentations, &c. They had, indeed, at the time of voting this letter, nothing to fear from him, as he was to leave the province in a few days. At the date of the former letter, they knew that, in a few weeks after, they would be liable to be

* To January 10th, 1770.

negatived

1769 negatived by him, if elected of the council, but, at the same time, they had more reason to be afraid of not being elected by the house, if they should refuse the letter when brought to them to sign. Four, who did not sign it, were not elected.

Liberty was the general object at this time, but it is certain that every supposed advance towards it brought a restraint upon freedom of judgment in the manner of attaining to it.

After the prorogation, two or three weeks only passed, before the governor left the province. He had determined to avoid the parade of the publick commencement, which came on in a few days, but was persuaded by his friends to attend; and when he had gone through it, without any insult worth notice from the rude people, who always raise more or less tumult on that day, he thanked his friends for their advice. Nothing made him more obnoxious to the inhabitants, than the opinion, fixed in them, that he had been the cause of sending troops among them. Though they could not prevent their landing, yet they hoped to effect their speedy removal, and they did not cease their endeavours until they were accomplished. In the height of his dispute with the general court, when the spirit of opposition was rather growing stronger than weaker, two* of the regiments had been removed. It was determined to remove the 29th to the barracks on Castle Island, which was prevented by the refusal of the house to furnish the barracks, and preparations were making for removing the 14th to New York: at least, this was the received opinion. It appeared, however, that those two regiments were to remain in town, and it was said that the commissioners of the customs had applied to the governor, that measures might be taken for that purpose.

* The 64th and 65th.

Such a report was sufficient ground for a town meeting. If the report was without grounds, still some good would arise from the towns signifying their sense of the nature and consequences of such an application. A town meeting was assembled accordingly*, and the town voted that "such persons among us, if any such there be, as have petitioned governor Bernard, or in any other way signified their desire that some of the troops may be detained for the preservation of their persons and properties, have therein counteracted the declared sense of the town, discovered themselves ignorant of its true interest, and highly inimical to its peace and prosperity."

"And if, on any occasion, it should become necessary, the town are, and always have been, ready to obey and assist the civil magistrate in the 'due' execution of the 'good and wholesome' laws of the land, which, they are of opinion, will be sufficient for the preservation of peace and good order, without any military or foreign aid whatever."

It will not be possible to make the last vote consist with the accounts of the riots and tumults since the month of August, in the year 1765. The laws of the land certainly required the civil magistrate to be in a peculiar manner active in suppressing riots, and the excuse, in these cases, had always been the want of aid. There is no way, then, but by pretending that these laws are not "good and wholesome"; but this would be too pitiful a shift to charge upon the inhabitants of so large a town, who, it is said, unanimously agreed to this vote in a very full meeting. It is more charitable to suppose, that the body of the people, upon such occasions, put an implicit faith in their leaders, and rely upon their assurances, that what they assert or propose is right.

* July 4th, 1769.

1769 A few days before the departure of governor Bernard, he received letters from the secretary of state, which, being circular to the several governors of the continent, were apparently intended to be made publick. One of the last acts of his administration was his directing, or authorizing, the publication of the assurances to the people of the colonies in those letters, "that administration is well disposed to relieve the colonies from all 'real' grievances arising from the late acts of revenue. And though the present ministers have concurred in the opinion of the whole legislature, that no measures ought to be taken which can derogate from the legislative authority of Great Britain over the colonies, yet they have declared, that they have at no time entertained a design to propose any further taxes upon America for the purpose of a revenue; and that it is their intention to propose, in the next session of parliament, to take off the duties upon glass, paper, and colours, upon consideration of such duties being contrary to the true principles of commerce."

✓ The non-importation associations in the colonies had been for some time declining. Government in England expected, by this assurance of intended favour, to incline the people still further to abate their opposition. But it had a very different effect. It was immediately the common language among the advocates for liberty, "repealing the act upon principles of commerce is a mere pretence, calculated to establish the grievance we complain of. The true reason why the duty upon tea is to continue, is to save the 'right' of taxing. Our acquiescing in the repeal of the rest will be construed into an acknowledgment of this 'right.' The fear of trouble from the discontent of merchants and manufacturers, upon our non-importation agreements, has brought the ministry to consent to this partial repeal

peal. A vigorous enforcement of these agreements 1769 will increase the fear, and we shall certainly carry the point we contend for, and obtain the repeal of the whole."

A meeting of the trade was called in Boston. Men who had no concern in trade had the greatest influence at this meeting. The repeal of only part of the act was unanimously resolved to be a measure intended merely to quiet the manufacturers in Great Britain, and to prevent the setting up of manufactures in the colonies, and would by no means relieve the trade from its difficulties; it was, therefore, further resolved, to send for no more goods from Great Britain, a few specified articles excepted, unless the revenue acts should be repealed. A committee was appointed to procure a subscription of the inhabitants of the town, not to purchase any goods from persons who have imported them, or who shall import contrary to the late agreement; and another committee to inspect the manifests of cargoes of all vessels arriving from Great Britain, and to publish the names of all importers, unless they immediately deliver their goods into the hands of a committee appointed to receive them.

Another committee was appointed to prepare further business for the next meeting. In the midst of these proceedings, tending to, and actually producing, great disorder, and an unjust invasion of property, in defiance of the laws and contempt of the powers of government established, governor Bernard left the administration to lieutenant-governor Hutchinson, embarked on board the Rippon, a man of war ordered from Virginia to receive him, and sailed for England. Instead of the marks of respect commonly* shewn, in a greater or less degree, to
governors,

* One of his predecessors, governor Shute, left the province
more

1769 governors, upon their leaving the province, there were many marks of publick joy in the town of Boston. The bells were rung, guns were fired from Mr. Hancock's wharf, liberty tree was covered with flags, and in the evening a great bonfire was made upon Fort Hill.

Governor Bernard had spent eleven years in America, two of them in good harmony with the people, when governor of New Jersey. Having many children, he was attentive to a provision for them, and, upon Mr. Pownall's vacating the Massachusetts government, made interest to succeed him, expecting greater emoluments there than in New Jersey. Notwithstanding the violent resentment of a particular family*, soon after he came to the government, and a difference with the surveyor-general of the customs not long after, which, in its consequences, cost him a great deal of trouble, he preserved the general esteem of the people the first five years of his administration. If, at the expiration of that term, he had quitted the government, he would have been spoken of as one of the best of the New England governors.

When the opposition to the authority of parliament began in the province, he was obliged, by the duty of his office, to counteract this opposition. This lost him the esteem of the people, and enabled those persons, who, for other reasons, had taken offence, to gratify their private resentment, by heightening the publick resentment against him throughout the province.

The last four years may be said to have been one continual scene of vexation. He had the satisfac-

more privately than governor Bernard. It was not then in the power of the people to shew any marks of respect, or disrespect, because they did not know his intention. No indignity, however, was offered, when his departure was publickly known.

* Mr. Otis's.

tion

tion of being informed, from time to time, that his 1769
conduct was approved of by the king, and by his
ministers, and he was encouraged to persevere. But
the rage against him became, at length, so violent,
that it was judged necessary to recall him. From
the appearance of a determination to pursue vigorous
measures, in order to secure the colonies from separating
themselves from the rest of the dominions, lenient
measures were suddenly thought more proper for that
purpose. The people, it was said, had been fretted,
and indulgence would restore them to their former
good humour. Though the continuance of a governor,
disagreeable to the people, could not be an invasion
upon their rights; yet his removal might have a
tendency to that conciliation so much desired. It
was well known in America, that the surest way
for a governor to keep from hazard of removal
was by keeping upon good terms with the people
of his government; and even addresses for the
continuance of a governor, though they always
carried with them grounds of suspicion, had, in
many instances, been serviceable for that purpose;
but there have been times, and this was one, when
it has not been possible for a governor to preserve
the favour of the people, and the approbation of
his own conscience, at the same time.

CHAPTER III.

From the departure of Governor Bernard, to the arrival of Governor Gage.

1769 **U**PON governor Bernard's leaving the province, the administration devolved upon Mr. Hutchinson, the lieutenant-governor. He had been long employed in publick business. For ten years he was one of the representatives of Boston, three of which he was speaker of the house. From 1749 to 1766 he had been, every year, of the council; so that he had sufficient opportunity to acquaint himself with the constitution and publick affairs of the province.

While the supreme legislative authority remained uncontroverted, he had seen the subordinate powers of government maintaining vigour and force sufficient for the preservation of peace and order. As soon as this authority was called in question,—in part acknowledged, in part denied, without any criterion for settling the limits,—submitted to by some, resisted by others, the subordinate authority lost its vigour, and, in every matter which respected the controversy, became more or less enervated.

At first, indeed, the supreme authority seemed to be admitted, the case of taxes only excepted; but the exception gradually extended from one case to another, until it included all cases whatever. A profession of "subordination," however, still remained; but it was a word without any precise meaning to it.

At

At all times there have been parties, *ins* and *outs*, 1769 in the colonies, as well as in the kingdom. In Massachusetts Bay, the exception to the constitutional authority of parliament was first taken, and principally supported, by men who were before discontented, and by them had been brought into the house of representatives, and there employed to strengthen the opposition to the governor in other points. The council, by degrees, had been brought to the same sentiments with the house. The lieutenant-governor, therefore, entered upon his office under circumstances peculiarly difficult and discouraging. He was bound by a solemn oath, as well as by the nature of his office, to support an authority to which the body of the people refused to submit, and he had no aid from any of the executive powers of government under him.

Although the other branches of the legislative power did not, by any express acts or votes, authorize the forcible opposition to the authority of parliament, yet they declined joining with the first branch in any measure to suppress or counteract such opposition; and suffered bodies of men, for the purpose of this opposition, to assume powers unwarrantable and illegal, and tending to disorder and anarchy.

The town of Boston had been the chief seat of the opposition. Mr. Bernard left in being, what was called the merchants' meeting in that town, but then upon adjournment. The professed design of this meeting was to procure a general repeal of the acts of parliament which imposed duties, for the purpose of a revenue, upon goods imported into the colonies. At a former session, a voluntary subscription not to import goods from Great Britain, a few articles only excepted, had been determined on. All was to be free; no compulsion. This, it was found, did not answer. The subscription was not
S general,

1760 general, and many who had subscribed were charged with departing from their engagements.

The design, at this time, was to enforce the compliance with the former subscription, and to compel all other persons to abstain from importation. The first step for the purpose was the publication in the newspapers, of the names of such persons as were most notorious for persisting in importing goods contrary to the agreement of the merchants, "that there might be the concurrence of every person upon the continent in rendering their base and dangerous designs abortive." Many persons, at first, appeared determined not to submit to so arbitrary a proceeding, but the subscription was general, with few exceptions only.

A committee was appointed to receive into their custody the goods of all such persons as had continued to import after the first subscription. It was hard to be compelled to this, but a ship arriving from London about this time, belonging to two principal merchants*, who had not subscribed, they came under engagements to sell none of their goods until the time agreed upon for non-importation expired†; and the rest, except three or four, complied also. The committee was not satisfied with the like engagement for goods which had been shipped by persons in England consigned to their factors in Boston. Such factors were compelled to re-ship the goods to their principals in England.

Among those who finally refused to comply, there was a bookseller, who was obnoxious, not only for his firmness in this cause, but for his publications in a newspaper of which he was the proprietor. He had not only charged some of the principal merchants who had engaged not to import, with departing from their engagements, but, what was more

* Messrs. Greene and Boylstone.

† January 1st, 1770.

pro-

provoking, he had ridiculed the political evening 1769 club, which met for the purpose of supporting the opposition to government; and had pointed out several of the members by ludicrous names, which gave great offence. In other newspapers, the characters of the governor, lieutenant-governor, secretary, and others, who ventured to disapprove of the proceedings against law and government, had been grossly abused and calumniated, without any restraint from religious or moral considerations. All attempts to obtain redress in a legal way had utterly failed. Time alone was sufficient to defeat the calumny, with most people, but not with all. An accusation against a ruler is easily received by the people. A lie, in times of party heat, if it is not current above half a hour, makes an impression upon some who never hear of the detection.

The opposition, when the heads of it were abused, took a summary but effectual way of punishing offenders, and deterring others from the like offences. The bookseller, coming up King street towards the town-house with his partner, was assaulted by one of the persons reflected on for importing contrary to agreement. A great number of people immediately collected together. The obnoxious person who had been threatened, and his partner, had, each of them, a pistol in his pocket, and that of the partner, as he alleged, was fired by his fall in the scuffle. This enraged, and increased the number of the people. The bookseller fled to the main guard, which was near, and the people followed, and insisted upon his being delivered to them. The guard being insulted, the two regiments were ordered to their arms.

An unfortunate seaman, suspected of being an informer, happened to be seized about the same time by the populace, to undergo the modern punishment of being tarred and feathered, and carted through the town. The two companies joined, and

1769 made a vast body of people, and, night coming on, they required the inhabitants through all the streets where they passed, to place lights in their windows, keeping the town in a state of tumult and terror, until late in the evening; when, after long cruel treatment of the innocent seaman, they set him at liberty and dispersed. This was the first trial of a mob since the troops had been in the town, and, having triumphed in defiance of them, a mob became more formidable than ever.

The lieutenant-governor had caused such of the council as were in town to be summoned to meet him immediately. It was apparent that any other attempt to suppress the mob, except that of calling upon the troops to be aiding to the civil magistrates, would be ineffectual, but this they all declared to be inexpedient.

The bookseller absconded for some days, to avoid the further rage of the people. Instead of a warrant to apprehend any of the persons concerned in the assault upon him, a warrant was issued by one of the justices, to apprehend him for firing a pistol upon the king's subjects, "lawfully and peaceably" assembled together.

The lieutenant-governor directed such justices as were inhabitants of Boston, to attend him in council, and stated to them the peculiar obligations which the law, and their oaths, laid them under, in all cases of riot, and the destructive consequence of their neglect of duty.

They professed their disapprobation of the cruelty to the pretended informer, and their readiness to exert themselves in carrying the law into execution against all offenders in like cases; but, in the case of the bookseller, they were not so explicit. One of them signified his opinion, that there would be no prosecution against him, but thought there was danger of his being torn to pieces by the people,
"for

“for opposing the whole continent in the only 1769 measure which could save them from ruin*.”

This was one instance of the force of this newly erected power beyond that of the established powers of government. Besides this, owners and masters of ships submitted to have the manifests of goods on board examined by committees; and merchants, who would have procured resistance against the search of a custom-house officer, legally authorized by a writ of assistance, acquiesced in a search made by such committees. A committee of merchants, also, in the town of Boston, kept up a correspondence with like committees in Salem, and other maritime towns in the province, in order to an uniformity of measures †.

here

In

* To avoid this rage, he was obliged, soon after, to give up his business, and to take leave of the province.

† A correspondence was also carried on with committees in the principal trading colonies.

The colonies were not all equally zealous. South Carolina appointed a standing committee of thirty-nine merchants, planters, and mechanicks, formed of an equal proportion of each; who were empowered to transact business, and to call “the people” together from time to time, &c. The merchants of New Hampshire stood out, though the other colonies threatened to forbear all commerce with that colony. Rhode Island professed to join, but privately imported to their great gain. Virginia seemed disposed to acquiesce in the assurances given by lord Hillsborough, that no further taxes were intended; and two gentlemen from that colony and Maryland came to Boston, and made their proposals to the committee there, intimating that the southern colonies would not consent to go those lengths which the Massachusetts proposed. Both Pennsylvania and New York disapproved of the condition made by Massachusetts, that “all” the revenue acts should be repealed. The Massachusetts merchants had a special view to the duty on molasses; though, upon a motion from themselves, and a declaration that they would submit to a penny per gallon, it had been reduced to that rate. Neither Pennsylvania nor New York imported molasses, in any proportion to Massachusetts, and, therefore, more easily submitted.

Towards the end of the year 1769, when the agreement was near expiring,

1769 In every affair of a publick nature, the party in opposition to government had its influence. The president of the college * dying, the corporation, who were to elect a successor, consulted the Boston representatives in every step. Two † of the corporation, great friends to the popular cause, were successively elected, and declined accepting. The minister of Kittery ‡ would have had the voice of the people, if his political principles had not been a bar. The want of a concurrence of political principles with other necessary qualifications in the same person, caused the place to remain vacant longer than usual.

At the superior court for the county of Suffolk, the grand jury found bills of indictment against Sir Francis Bernard, then governor of the province, though absent with leave, Thomas Gage, esq., then commander-in-chief of all his majesty's forces on the continent, the five commissioners of his majesty's customs, the collector and the comptroller for the port of Boston, for writing certain letters to the secretary of state, and other the king's ministers, and therein slandering the inhabitants of the town of Boston, and of the province of Massachusetts Bay. The attorney-general had refused to draw the bills, when requested by the grand jury, and they either drew them themselves, or employed some other lawyer, unknown, and presented them to the court.

Governors of the plantations, by an act of parliament in the reign of king William the Third, are

expiring, the merchants called another meeting in Boston, and agreed to conform to the other colonies, and to make the condition of their subscription the same as it had been at first,—the repeal of the act for duties on painters' colours, paper, glass, and tea.

* Mr. Holyoke, who died June 1st, 1769.

† Dr. Winthrop, professor of mathematicks, &c., and Dr. Cooper, one of the ministers of Boston.

‡ Mr. Stevens.

made

made amenable to the court in Westminster Hall, 1769 for crimes committed within their governments. This was reason sufficient to have induced the court in Massachusetts Bay to reject the bill against the governor; and the nature of the facts which were made the grounds of indictment would have justified the refusal of all the rest. The court, however, thought it advisable to take no publick notice of this irregular, wanton proceeding. It had been the practice for the clerk, without any special order, to issue a warrant of commitment, or a summons, according to the nature of the offence, returnable the next term, where the person charged was not in custody. The court so far interposed, as to give private orders to the clerk, to issue no summons upon these bills, without special direction*.

It was now very evident, that, without a further exertion of power and authority from the kingdom, acts of parliament for raising money by taxes from the inhabitants of the colonies could never be carried into execution. The people were determined to resist them. There was no power, legislative or executive, within the colonies, which would exert itself in checking this resistance. A military force was of no sort of use. Without the direction of a civil magistrate, it remained perfectly inactive in all times of tumult and riot; and, by this time, it was perfectly despised, seeing that nothing short of actual rebellion and the people's taking up arms, would justify the military, without the civil power, in any offensive acts. In such a case, the small force then in Massachusetts Bay was insignificant. In theory, the people now generally thought they were to be justified. They had, for three or four years past,

* The attorney-general, afterwards, in consequence of the king's order to the lieutenant-governor, entered, in behalf of the crown, a *nolle prosequi* upon each of them.

been

1769 been taught from England, that, while they had no representatives in parliament, acts for taxing them were a mere nullity, and ought to be resisted. This doctrine was countenanced by great men in both houses of parliament. A majority, indeed, were of another mind, but this majority, they were also taught, was corrupted by the king's ministers to oppress the colonies. The body of the people of the kingdom, it was said, was in favour of the colonies. Ministry would not have it in their power to pursue effectual measures against the mind of the kingdom. The multitude of pamphlets and newspaper publications, which appeared at this time, vindicating and applauding the colonies, gave them further spirits; and the assurances of support which the leaders received by private letters from their correspondents in England, crowned all.

Although acts for taxes were pronounced null, yet the general authority of parliament over the colonies had not been denied; but, in some of the pamphlets which were brought to America, it was now advanced, that the king, by his representative, the governor, with the council, and the house of representatives in each colony, constitute a full and sole legislative power, and, consequently, the legislative power of parliament must be excluded. In Massachusetts Bay, a representative of one of the towns in the county of Hampshire, an eminent lawyer and highly esteemed*, made a publick declaration in the house, that he knew not how parliament could have acquired a right of legislation over the colonies. In a publick town meeting of the inhabitants of Boston, a motion was made, and, exception being taken to it, because it implied a general independency upon parliament, one of the representatives of the town† undertook to obviate the

* Joseph Hawley, esq.

† Mr. Samuel Adams.
exception,

exception, and concluded in this manner: "Independent we are, and independent we will be." 1769

At first, these were said to be bold strokes, and were not pleasing to the greatest part of the people. The newspaper writers soon availed themselves of such examples, and the doctrine became familiar. Caution was used, however, lest, by going too great lengths, offence should be taken by such as in England had espoused the cause of the colonies. What was called a supremacy of parliament was, therefore, still acknowledged. There were many cases in which its authority was allowed to be useful and necessary, unless a general authority, within the colonies, could be established over the whole. An instance of this sort may be mentioned. It was generally thought to be of publick benefit, that no fishing vessels should go out upon their voyages until the month of April, annually; but if any colony refused to conform to this regulation, it would defeat the design: and the advantage which one colony would have over another, by being first at market, prevented the whole from uniting*. There were many other cases which respected the colonies in general, in which the authority might well be admitted, but in all matters merely respecting the interior concerns of a particular colony, parliamentary interposition was not admissible. It was also allowed that one great end of settling the colonies was the benefit which would arise from their commerce, and it seemed reasonable to submit to a "due" regulation of it, but the power reserved, of judging when the regulation was "undue," destroyed the whole concession; and it can-

* Such was the opinion in Massachusetts Bay of parliamentary authority, a few years before this time, that, upon a motion in the house for application to parliament to pass an act for this purpose, it failed, not from any apprehensions of danger from the precedent, or any scruple of the constitutional authority of parliament, but for want of a majority to approve of the restraint itself.

not

1769 not be denied, that attempts to carry the laws against illicit traders into execution had a great tendency to raise an opposition to the authority of parliament in general, and to accelerate a declaration of independence.

Governors in the colonies could not dispense with communicating the state of their governments to the king through his ministers. The facts spoke for themselves. The tendency of them was obvious. The plain narratives, supported by authentick records, or the most publick notoriety, were nevertheless pronounced misrepresentations with a view to bring on vindictive measures, and to increase a flame in the colonies, which, in truth, it was the interest of the governors, beyond that of all other men, to extinguish.

The merchants had agreed to give no order for goods from England before the 1st of January 1770, and many persons who had imported goods after this agreement, when they arrived, were compelled to deposit them in the custody of the merchants, and to promise not to make sale of them, "during the continuance of the agreement." They supposed that, when the 1st of January came, they had a right, according to this agreement, to be repossessed of their goods, and to dispose of them as they thought fit. But the committee refused to deliver them, alleging, that, whatever might be the letter of the agreement, the spirit of it was otherwise; and that the goods must remain in custody until a reasonable time had passed for other merchants to import goods upon such orders as they might give after the 1st of January. Two of the lieutenant-governor's sons were among the persons who had been compelled to enter into this agreement. Conceiving themselves injuriously treated, they caused a padlock, which they had suffered the committee to place upon their warehouse, to be taken off, and the

the goods to be removed to some other place un- 1770
known to the committee. Several other persons
began, at the same time, to make sale of their goods,
supposing the term to be expired. A meeting of
merchants was called, a demand made by a com-
mittee, of restoration of the goods, and a refusal
given. The whole body then resolved to go to the
lieutenant-governor's house, his sons being of his
household, and to make a demand in form. A great
number of people collected with them by the way.
The lieutenant-governor warned the people of the
consequence of their illegal, riotous proceedings;
and required them to disperse. They continued
their meetings, notwithstanding, and the town was
in the greatest disorder. The lieutenant-governor
was pressed by several gentlemen, in order to pre-
vent violence to the persons of his sons, as well as
to their property, to advise their delivering the
goods, to be detained until the further time proposed
should expire. Without sufficiently considering the
consequences, he consented; but had soon reason to
repent. He felt more trouble and distress of mind
from this error in his publick trust, than he had
done from loss and damage to his private fortune,
when his house and great part of his property were
destroyed. He was triumphed over, and reproached
for the concession, by the men who, under colour of
friendship, advised to it. The peace of the town
was not restored. There were others who refused
to comply, and the tumultuous assemblies continued
from day to day. He caused the council to be con-
vened, several times, and urged them to join with
him in requiring the justices to exert the powers
with which they were vested for dispersing unlawful,
tumultuous assemblies; but they declined acting,
though several of them expressed their disappro-
bation. He then directed the justices to attend him,
and exhorted them to the discharge of their duty.
Upon

1770 Upon consulting among themselves, their chairman delivered the result; that though these assemblies might be deemed unwarrantable, yet there were times when irregularities could not be restrained; that this was a time when the minds of the people were greatly agitated and disturbed, from a sense of danger to their just rights and liberties, which they hoped, in this way, to be able to preserve; the justices, therefore, were of opinion that it was not incumbent on them to take any measures for interrupting the proceedings. Several of the justices attended the meetings, and voted for the measures. The lieutenant-governor, thereupon*, directed the sheriff to go into the meeting, and to read a paper, in which, after declaring the illegality of their actions, and warning them of the penalties to which they made themselves liable, they were required, in his majesty's name, forthwith to separate and disperse. They suffered the paper to be read, but voted, that the sheriff be desired to acquaint the lieutenant-governor, that they are unanimously of opinion that their assembly is warranted by law, and that they are determined to keep consciences void of offence towards God, and towards man.

The next step, however, which they took, was the proscription of four persons by their names, declaring them enemies to their country, and that they ought to be treated as such, by withholding, not only all commercial dealing, but every act and office of common civility. And, soon after, they declared their assembly dissolved. This vote of proscription had its effect. The proscribed persons were persecuted for several weeks after, by the rabble collected to interrupt customers passing to and from their shops and houses, by posts erected before their shops with a hand pointed towards

* January 23rd, 1770.

them,

them, and by many marks of derision. At length*, a 1770 more powerful mob than common collected before the house of one of them, a shopkeeper of fair character in the town. One of the neighbours† found fault with the proceedings; which provoked the mob to drive him into his house for shelter. Having been a landwaiter, or inferior custom-house officer, and, before that, an informer against illicit traders, he was peculiarly obnoxious to the people. The mob surrounded his house, threw stones and brickbats through the windows, and, as it appeared upon trial, were forcing their way in, when he fired upon them, and killed a boy of eleven or twelve years of age. He was soon seized, and another person‡ with him, who happened to be in the house. They were in danger of being sacrificed to the rage of the people, being dragged through the streets, and a halter having been prepared; but some, more temperate than the rest, advised to carry them before a justice of peace, who committed them to prison.

The boy that was killed was the son of a poor German. A grand funeral was, however, judged very proper for him. Young and old, some of all ranks and orders, attended in a solemn procession from liberty tree to the town-house, and then to the common burying ground. I do not know that the persons who ordered the funeral, had in their minds the funeral of Sir Edmondsbury Godfrey, proposed by lord Shaftesbury, preceded by seventy-two clergymen, and followed by a thousand persons of condition, with innumerable others, in silent order, all for the sake of giving credit to the popish plot. The funeral of young Allen, killed in St. George's fields, was a more recent example, and the hint, it

* February 22nd, 1770. † Ebenezer Richardson.

‡ George Wilmot.

'1770 is probable, was taken from that. Each of the three was designed to raise the passions of the people, and to strengthen the respective causes in which their leaders had engaged them.

A more tragical affair, and which had very important consequences, happened soon after. The two regiments in the town of Boston were a continual eyesore to the inhabitants. During the winter, there had been frequent frays, in the streets, between the soldiers and the town's people. The pains taken by the officers, to keep their men from shewing their resentment at hissings and insults, were conspicuous; but it was not possible to prevent a return, and there appeared a rooted enmity on each side. The journal of occurrences, sent to New York to be published, seems to have had its first effect there*, which tended to encourage the people in Boston, where discontent was evidently increasing all the month of February.

On Saturday, the 3rd of March, lieutenant-colonel Carr, the commanding officer of the 29th regiment, made complaint in a letter to the lieutenant-governor, of the frequent abuses offered to his men, and of very insolent, provoking language given to some of them on that day, by certain journeymen ropemakers, which had brought on a fray, in which one of the soldiers was very dangerously wounded. On

* Liberty pole, which had been erected at New York, was cut down (January 21), and some of the troops were charged with the fact. The next day, two or three thousand people assembled about the place where the pole had stood, and passed, and caused to be printed, a resolve in form; never to employ a soldier on any terms whatever; but to treat them with abhorrence and contempt, as the enemies of the constitution; and if any, except sentinels and orderly serjeants, should be found, in the night, with arms, or, after the roll is called, without arms, and behaving in an insulting manner, to treat them as enemies to the constitution. Quarrels ensued, in one of which a seaman was said to be killed. Other persons were badly wounded.

Monday,

Monday, the 5th, the lieutenant-governor laid this 1770 letter before the council, for their advice and assistance. Several of the council signified their opinions, that the people would never be satisfied with any thing short of the removal of the troops. One gentleman said, that he knew that some of the principal inhabitants had several times met together, to consult upon the proper means for effecting their removal. The council, however, could not agree in any advice; though it was apprehended that the smaller frays would be followed by one more general.

Early in the evening, clusters of the inhabitants were observed in different quarters of the town. Parties of soldiers were also driving about the streets, as if the one, and the other, had something more than ordinary upon their minds. About eight o'clock, one of the bells of the town was rung in such manner as is usual in case of fire. This called people into the streets. A large number assembled in the market-place, not far from King street, armed with bludgeons, or clubs. A small fray between some of the inhabitants and the soldiers, at or near the barracks at the west part of the town, was of little importance, and soon over. A sentinel, who was posted at the custom-house, not far from the main guard, was next insulted, and pelted with pieces of ice, &c., which caused him to call to the main guard to protect him. Notice was soon given to captain Preston, whose company was then on guard. A serjeant, with six men, was sent to protect the sentinel; but the captain, to prevent any rash, precipitate action, followed them himself. There seem to have been but few people collected, when the assault was first made on the sentinel; but the serjeant's guard drew a greater number together, and the guards were more insulted than the sentinel had been, and received frequent strokes from snowballs, lumps of ice, &c. Captain Preston, there-

1770 thereupon, ordered them to charge ; but this was no discouragement to the assailants, who continued to pelt the guard, daring them to fire. Some of the people who were behind the soldiers, and observed the abuse, called on them to fire. At length, one of them received a blow with a club, which brought him to the ground ; but, rising again, he immediately fired, and all the rest, one excepted, followed the example. This seems, from the evidence at the trials, and the observation of persons present, to have been the course of the material facts. Three men were killed outright, two mortally wounded, who died soon after, and several slightly wounded. Gray, one of the killed, was one of the ropemakers who had been in quarrels with the soldiers, and he, with Attucks, a mulatto, another of the killed, were among the most active in this attack. Carr, one of the mortally wounded, acknowledged, upon his death bed, that he had seen mobs in Ireland, but never knew troops bear so much without firing, as these had done. The soldiers, immediately after the action, withdrew to the main guard, which was strengthened by additional companies.

Two or three of the persons who had seen the action ran to the lieutenant-governor's house, which was about half a mile distant, and begged, for God's sake, he would go to King street, where, they feared, a general action would come on, between the troops and the inhabitants. He went immediately, and, to satisfy the people, called for captain Preston, and inquired why he fired upon the inhabitants without the direction of a civil magistrate. The noise was so great, that his answer could not be understood, and some, who were apprehensive of the lieutenant-governor's danger from the general confusion, called out, " the town house, the town house," and, with irresistible violence, he was forced up by the crowd into the council chamber. There, demand was immediately

mediately made of him, to order the troops to with- 1770
draw from the town house to their barracks. He
refused to comply; and calling from the balcony to
the great body of people which remained in the
street, he expressed his great concern at the un-
happy event, assured them he would do every thing
in his power in order to a full and impartial in-
quiry, that the law might have its course, and
advised them to go peaceably to their several homes.
Upon this there was a cry—"home,—home," and a
great part separated, and went home. He then
signified his opinion to lieutenant-colonel Carr, that,
if the companies in arms were ordered to their bar-
racks, the streets would be cleared and the town in
quiet for that night. Upon their retiring, the rest of
the inhabitants, except those of the council chamber,
retired also.

Lieutenant-colonel Dalrymple, at the desire of
the lieutenant-governor, came to the council cham-
ber, while several justices were examining persons
who were present at the transactions of the evening.
From the evidence of several, it was apparent that
the justices would commit captain Preston, if taken.
Several hours passed before he could be found, and
the people suspected that he would not run the
hazard of a trial; but, at length, he surrendered
himself to a warrant for apprehending him, and,
having been examined, was committed to prison.
The next morning, the soldiers who were upon
guard surrendered also, and were committed. This
was not sufficient to satisfy the people; and early
in the forenoon they were in motion again. The
lieutenant-governor caused his council to be sum-
moned, and desired the two lieutenant-colonels of
the regiments to be present. The select men of
Boston were waiting the lieutenant-governor's com-
ing to council, and, being admitted, made their
representation, that, from the contentions arising
from

1770 from the troops quartered in Boston, and, above all, from the tragedy of the last night, the minds of the inhabitants were exceedingly disturbed; that they would presently be assembled in a town meeting; and that, unless the troops should be removed, the most terrible consequences were to be expected. The justices, also, of Boston and several of the neighbouring towns, had assembled, and desired to signify their opinion, that it would not be possible to keep the people under restraint, if the troops remained in town. The lieutenant-governor acquainted both the select men and the justices, that he had no authority to alter the place of destination of the king's troops; that he expected the commanding officers of the two regiments, and would let them know the applications which had been made. Presently after their coming, a large committee from the town meeting presented an address, or message, to the lieutenant-governor, declaring it to be the unanimous opinion of the meeting that nothing can rationally be expected to restore the peace of the town, "and prevent blood and carnage," but the immediate removal of the troops. The committee withdrew into another room to wait for an answer. Some of the council urged the necessity of complying with the people's demand. The lieutenant-governor, thereupon, declared that he would upon no consideration whatever give orders for their removal. Lieutenant-colonel Dalrymple then signified, that, as the 29th regiment had originally been designed to be placed at the castle, and was now peculiarly obnoxious to the town, he was content that it should be removed to the castle, until the general's pleasure should be known. The committee was informed of this offer, and the lieutenant-governor rose from council, intending to receive no further application upon the subject; but the council prayed that he would meet them again in the afternoon

noon, and, colonel Dalrymple desiring it also, he 1770
 complied. Before the council met again, it had
 been intimated to them that the "desire" of the
 governor and council to the commanding officer to
 remove the troops, would cause him to do it, though
 he should receive no authoritative "order." As
 soon as they met, a committee from the town meet-
 ing attended, with a second message, to acquaint
 the lieutenant-governor, that it was the unanimous
 voice of the people assembled, consisting, as they
 said, of near three thousand persons, that nothing
 less than a total and immediate removal of the
 troops would satisfy them*.

The council, who were divided in the forenoon,
 were now unanimous; and each of them, separately,
 declared his opinion, and gave his reason for it;
 and one or more of them observed to the lieu-
 tenant-governor, that he would not be able to justify
 a refusal to comply with the unanimous advice of
 the council, and that all the consequences would be
 chargeable upon him alone. The secretary of the
 province, who thought differently in the morning,
 the two lieutenant-colonels, and the commander
 of one of his majesty's ships then upon the station,
 who were all present in council, concurred in the
 necessity of his complying. He had signified his
 own opinion, that, at all events, the governor and
 council should avoid interfering in the destination
 of the troops, and leave it to the commanding officer;
 but when he considered that, by the charter, the
 council was constituted for advice and assistance to
 him, that he had called them together for that pur-

*The chairman of the committee, in conversation with lieutenant-colonel Dalrymple, said to him, that if he could remove the 29th regiment, he could remove the 14th also, and it was at his peril to refuse it. This was a strong expression of that determined spirit which animated all future measures.

1770 pose, that his standing out alone would probably bring on a general convulsion, which the unanimity of the king's servants might have prevented, he consented to signify his desire, founded upon the unanimous opinion and advice of the council, that the troops might be removed to the barracks in the castle; at the same time disclaiming all authority to order their removal.

Some of the officers of the regiments appeared, the next day, to be greatly dissatisfied with being compelled by the people to leave the town so disgracefully. Expresses were sent away immediately to the general. The jealousy, that the general would forbid the removal, caused further measures to force the troops from the town before there could be sufficient time for his answer. Roxbury, the next town to Boston, assembled and sent a committee of their principal inhabitants with an address to the lieutenant-governor, praying him to interpose, and to order the immediate removal of the troops; but he refused to concern himself any further in the affair. As the time approached when a return might be expected from New York, it was thought fit to have another meeting of the town of Boston, and a committee was appointed further to apply to the lieutenant-governor to order the troops out of town; Mr. Adams, their prolocutor, pressing the matter with great vehemence, and intimating, that, in case of refusal, the rage of the people would vent itself against the lieutenant-governor in particular. He gave a peremptory refusal, and expressed his resentment at the menace. The committee then applied to the commanding officer, and, the same day*, the 29th regiment, and, the next morning, the 14th, were removed to the castle.

This success gave greater assurances than ever,

* March 10th.

that,

that, by firmness, the great object, exemption from 1770
all exterior power, civil or military, would finally
be obtained. Checks, and temporary interruptions,
might happen; but they would be surmounted, and
the progress of liberty would recommence.

A committee of the town of Boston then proceeded
to the examination of witnesses, "in order to shew
to the world, and especially to the friends of the
colonies in England, that there were just grounds
for insisting upon the removal of the troops." The
variance of their account of facts from the state-
ment of the whole evidence, as it afterwards ap-
peared on the trials, is a strong instance of the small
dependence which can be placed upon *ex-parte* wit-
nesses, examined by men engaged in political con-
tests.

To secure the first impressions, a letter was pre-
pared by the committee, and despatched in a few
days after the fact, exemplifications whereof were
sent to a great number of persons of publick charac-
ter in England; in which the sending and stationing
troops in the town is charged "to the intrigues of
wicked men, with design to enslave it;" complaint is
made of "their landing with appearance of hostility,
and marching with ensigns of triumph," of "conti-
nuing their enormities, by rescuing prisoners out of
the hands of justice, and firing upon the inhabitants
when in the peace of God, and of the king," of
"overawing the magistrates and courts of justice*,
who had shewn such mean submission, as gave dis-
gust to the coolest and most judicious persons in the
community." A narrative is then given of the un-
happy action in King street; that a party of seven
or eight soldiers, under the command of captain

* This was an injurious reflection upon the judges of the supe-
rior court, who were men of great integrity; and, if they had any
awe upon their spirits, it was the awe of the people.

Preston,

1770 Preston, "and by his order," fired upon the inhabitants promiscuously in the street, "without the least warning," and killed three on the spot, and wounded others; that, "as witnesses swear, when the soldiers fired, several muskets were discharged from the house where the commissioners of the customs held their board;" that "a boy, servant to one Mainwaring, a petty officer, had, upon oath, accused his master of firing upon the people from a window of that house, a number of persons being in the room with him."

This short intimation, it was added, was sent, by order of the town, to prevent, for the present, any ill impression being made upon his majesty's ministers, and others, by the account from the commissioners of the customs, and other enemies, until a more full representation could be made.

This representation, with the depositions of a great number of witnesses to facts preceding, accompanying, and following what was pronounced a bloody massacre, was printed a few days after, and many copies of it sent to England by a vessel hired by the town for that purpose. A certificate accompanied it, under the seal of the province, that the persons before whom the deponents were sworn had authority to administer oaths, and that credit ought to be given to their attestations*. A letter also, signed by Mr. Bowdoin, went with each copy, signifying his own belief of the truth of the depositions.

* This certificate was drawn, and presented to the lieutenant-governor, in such form as included, not only the credit due to the attestation of the justice, but to the facts contained in the depositions; and he refused to suffer the seal to be affixed. This raised a clamour, until some of the town's committee, convinced of the propriety of the exception, were content with an alteration. The controversial writers in England, notwithstanding the alteration, laid great stress on the seal of the province, towards establishing the truth of the facts.

It

It was urged, in excuse for this irregular proceeding, that it was merely intended to vindicate the characters of the inhabitants of the town from the reproach which might otherwise be cast on them in England; and, though the depositions were printed, they were not to be publicly sold until the trials were over. Many copies, notwithstanding, got abroad, and some of a second edition were sent from England, long before the trials of the officer and soldiers came on. The letter which preceded the account was also published immediately in all the newspapers.

It was happy for the prisoners, that evidence, taken in this manner, cannot be admitted in trials. Impressions, however, are sometimes made on the minds of men, who afterwards become jurors, which are not easily effaced.

It was further said, that such narratives of facts had been often published in England. They had likewise often been censured by the judges, as unwarrantable and illegal*.

But the injury to the commissioners of the customs was greater than to the officers and soldiers; not merely as it respected their characters in England, but as it tended to expose them to the resentment and wrath of the people of the town. It was incredible, that two persons, out of many hundreds, should see guns fired from the custom-house, and all the rest not observe them. Nor was any notice taken, in the printed account, of the characters of the witnesses; one of them, a French boy, whose evidence appeared to the justice so improbable, and whose character was so infamous, that the justice, who was one of the most zealous in the cause of liberty, refused to issue a warrant to ap-

* Reason and Tranter's trial for the murder of E. Lutterell; and Mary Blandy's, for the murder of her father.—*State Trials*.

prehend

1770 apprehend his master, against whom he swore ; and the other, an idiot, or of so weak understanding, that the managers did not call him to give his evidence, which would have been very material, if credited, in the trials of the officers and soldiers.

The removal of these regiments from the town gave rise to further measures in England, which increased discontent in the province ; and, in its consequences, was so important, that this circumstantial account of it may be excused.

Subjection to the authority of parliament was the great grievance from which all the colonies, in a greater or less degree, were endeavouring to free themselves. Discontent in the minds of the people, from any other cause or pretence, would dispose them to be more active and zealous in removing the principal grievance. The lieutenant-governor wished to avoid whatever might occasion this discontent, and to indulge even every prejudice, so far as was consistent with fidelity to his trust. Some of the heads of the party for liberty had made no scruple to declare, that, however cautious he might be in this respect, they would find a way to distress him, and make him weary of his place.

A session of the assembly in winter had been very rarely omitted since the charter, and the people considered it as part of the constitution. Before the time to which governor Bernard had prorogued the assembly arrived, the lieutenant-governor received from the secretary of state, a signification of the king's pleasure, that it should be further prorogued to the 14th of March, and it was accordingly prorogued then to meet at Boston ; but, before that time arrived, there came a further signification of the king's pleasure, that it should be held at Cambridge, unless the lieutenant-governor had more weighty reasons for holding it at Boston, than those which were mentioned, by the secretary of state, against it.

it. He was not able to offer such reasons as he had 1770 any ground to suppose would justify him with the king, and, therefore, he considered the instruction tantamount to a peremptory order*. However, as he did not incline that it should be canvassed by the house, he acquainted them, that he had received such instruction as made it necessary for him to meet them at Cambridge, when he had before intended to meet them at Boston; and, when they desired it, declined laying the instruction before them, having received a general direction to make no letters or instructions, which he might from time to time receive, publick without leave. The general body of instructions to the governor, he did not suppose to be included in this restraint.

The house, immediately after the lieutenant-governor's speech and their return to their chamber, appointed a committee to prepare a remonstrance against the prorogation of the general assembly by the "mandate" of the minister, a word which they now began to use as more striking, because less common, than *command*. They added the inconveniences of sitting in Harvard college.

The right of the crown to give instructions to the governor had never been questioned. Every commission from the charter had limited the power of the governor to such instructions as he should receive, and the rules prescribed by charter; but now, instructions were declared, in their remonstrance, to be an infraction of their essential rights as men and citizens, as well as of those derived to them by the British constitution, and the charter of the colony.

The lieutenant-governor having acquainted them, that, so long as he continued commander-in-chief, he should think himself bound to conform to every sig-

* He further prorogued the court to the 15th of March, to meet at Cambridge.

1770 nification of his majesty's pleasure, in the manner of exercising the powers given to the governor by charter, they desired the council to join with them in remonstrating against the manner in which the assembly had been prorogued.

The council, in an address, only observed, that they feared many inconveniences would arise from instructions in such cases as, from the local circumstances of the province, he must himself be the best judge of, and if, upon again revolving the matter in his mind, he should be convinced that it would be for his majesty's service, and the interest of the province, that the remainder of the session should be held at the usual place, or if he should think the reason for his instruction had now ceased, they presumed to hope that he would remove the assembly. They added, that some of their members, who were indisposed, and not able to attend at Cambridge, could attend at Boston.

He acquainted them, that, if it was left to his own opinion, or if the reason for his instruction ceased, he would give attention, and due weight, to the reasons of the council and house; but neither was the case, and he must consider himself the servant of the king, to follow his instructions, in what, otherwise, he might do, or not do, according to his discretion.

The house further remonstrated, that the holding of the assembly in any other town than Boston was against law, because, in the form of the writ for calling an assembly, it runs, "to be held at the town house in Boston;" but this had been so fully answered many years before, and the house was so much disposed to sit, that they went to business after a protest that it should not be considered as a precedent.

The lieutenant-governor thought it prudent to take no notice in his speech of the transactions in Boston, but to leave them to the executive courts, where
alone

alone it was proper to make inquiry into the facts, 1770 and to determine the construction of law upon them; but the house anticipated the executive courts, prejudged, and declared the killing of the inhabitants to be a horrid massacre; and ordered a narrative, which was drawn from the depositions taken by order of the committee of Boston, to be transmitted to their agent, Mr. De Berdt, in England. But their dissatisfaction with the state of affairs in general appeared in a message to the lieutenant-governor at the close of the session.

A custom-house officer in the town of Gloucester, or Cape Anne, had been tarred and feathered, and otherwise barbarously used by divers persons the last year, who had been convicted and fined, upon a prosecution in behalf of the crown, at the superior court. The same person had been seized a second time, and more cruelly used than before. A justice of peace had been opposed in the execution of his office, when endeavouring to suppress the rioters. This was a triumph over the laws of the province, as well as the acts of parliament for the regulation of trade. A law, called in the province "the riot act," had expired, and the house had refused to revive it. Upon a representation made by the justice to the lieutenant-governor, he thought fit to lay the affair before the two houses, and to recommend to them further provision for preventing riots, which so frequently happened, and for preserving the peace of the province.

The house suffered the message to lie more than a fortnight; but, two or three days before the assembly must, by the charter, be dissolved, they sent a very long answer, in which they reflect upon the lieutenant-governor for mentioning this instance to them, and leaving others, much more heinous and dangerous, unnoticed; and particularize enormities, "notoriously committed by the soldiers, which had
strangely

1770 strangely escaped punishment*." They expatiate upon the sending troops into the province, and call a standing army, without the consent of the general assembly, "an unlawful assembly, of all others the most dangerous and alarming." They charge the lieutenant-governor, as chief justice, with endeavouring, in the last administration, to procure the admission of the troops into the manufactory house, as a barrack, in a manner contrary to law,—with not mentioning to them, what he had undoubtedly heard of, the horrid slaughter of a number of the inhabitants, perpetrated by that unlawful assembly. They complain of the seizures made for breaches of acts of trade by custom-house officers, which they pronounce most rigorous and oppressive, and grounded upon unconstitutional acts; and, with further complaint of the prosecutions in the court of admiralty, uncontrolled† by the courts of common law, they add, that the disorder, so earnestly recommended to consideration, probably took its rise from such provocations; the use, therefore, which they should make of this information, would be to inquire into the grounds of the people's uneasiness, and to procure a radical redress of their grievances, &c. ‡

The lieutenant-governor was not more astonished than grieved, at a message which had so direct a tendency to encourage the people in acts of tumult and riot, and to incense the authority of government in England against the colony. The friends to America, in England, had always urged in its favour, that the people acknowledged the authority of parliament in all cases except that of taxes. Its

* This might either refer to quarrels between the inhabitants and the troops in the course of the winter, or to the superior court, for not proceeding to the trial of captain Preston.

† This was equivocal. Uncontrolled they were, in matters within their jurisdiction; but not so when they exceeded it.

‡ Appendix P.

authority

authority to establish courts of admiralty for trying 1770
and determining offences against the acts of trade,
is now denied, unless their decrees are to be controlled
by the courts of common law; and there cannot be a greater step towards independency than
that of assuming the sole power of raising and directing
all military force. This force is the *dernier
ressort* in all governments, under all forms; and
wherever this, by the constitution, is solely vested,
there, necessarily, is the supreme authority.

The lieutenant-governor, from what he had heard
of the facts, was of opinion, as the whole court was
afterwards upon trial, that the inhabitants were the
aggressors, in what the house called a massacre;
but he thought it prudent to keep his opinion to himself,
until the trials were over; and, therefore, gave
no answer to that part of the message. He was also
of opinion, that the judges of the superior court,
instead of being biassed in favour of the troops, were
in much more danger of awe from the leaders of the
people; and there had been a flagrant instance of
an attempt to awe them, a few days before the
delivery of the message.

The time for holding the superior court for the
county of Suffolk was the next week after the tragical
action in King street. Although bills were found
by the grand jury, yet the court, considering the
disordered state of the town, had thought fit to continue
the trials over to the next term, when the
minds of people would be more free from prejudice,
and a dispassionate, impartial jury might be expected,
after there had been sufficient time for the
people to cool.

A considerable number of the most active persons
in all publick measures of the town, having dined
together, went in a body from table to the superior
court then sitting, and Mr. Adams, at their head and
in behalf of the town, pressed the bringing on the
trial

1770 trial the same term with so much spirit, that the judges did not think it advisable to abide by their own order, but appointed a day for the trials, and adjourned the court for that purpose *. But even this irregularity the lieutenant-governor thought it best to take no notice of, in a publick message; and for the grand point, the relation between the parliament and the colonies, he had determined to avoid any dispute with the assembly, unless he should be forced into it. Therefore, after acquainting them that he should transmit their remonstrance to be laid before the king, and attempting a vindication of his own character from their charges against it†, he dissolved the assembly, the time, by charter, for a new assembly approaching.

The trial of Richardson and Wilmot, for killing the boy in a former riot, gave reason to expect an unfavourable verdict in the trial of the officer and soldiers. Wilmot was indicted as an accessory, and acquitted, no evidence appearing against him. The whole court was clear in opinion, that the evidence against Richardson, at most, amounted to manslaughter; and one or more declared the homicide excusable. Ordinarily, we may expect from a jury, in a case of life and death, that whatever sudden opinions may have been formed from the natural abhorrence of life being taken away from our fellow creatures, yet upon a calm and deliberate consideration, when life also depends upon our decision, all circumstances should have their due weight. But

* A committee had been appointed by the town to assist in the prosecution of the soldiers, and several of these persons were of the committee, but this was irregular. The courts, according to the practice in the province, required no prosecutors but the officers of the crown; much less would they have thought it proper for the principal town in the province to have brought all its weight, which was very great, into court against the prisoners.

† Appendix Q.

party prejudices, in times of civil dissension in Eng- 1770
land, had often prevailed more with juries than all
other considerations. Human nature is the same in
the colonies. The jury, notwithstanding the law
given to them from the court, found the prisoner
guilty of murder.

There was the same indecency upon this occasion;
as when the unhappy men, charged by Oates, in what
was called the popish plot, were found guilty. The
people gave a general shout.

The court was at first in distress. It was hard to
be obliged to give judgment upon a verdict which
appeared to them directly against law; and it was
difficult, in the state of the town, to order the jury
out a second time, or to refuse or delay sentence
after the verdict was received. It was received;
but, before sentence, the court was informed that
one of the jury was dissatisfied with the part he had
acted, and, upon inquiry, it appeared that he had
for a long time refused to agree with the rest in the
verdict, and consented at last, upon the assurance
given him by his fellows, that, as the judges had all
declared that the fact proved upon the prisoner did
not amount to murder, they would never proceed to
sentence, notwithstanding the verdict. In order to
consider what was proper in so unusual a case, the
court continued the cause until the next term, the
prisoner remaining committed in the mean time*.

While

* The governor could not pardon murder, but might suspend
execution until the king's pleasure should be known. If sentence
had passed, and been suspended by the governor, the people would
have been more enraged, than merely at the court's suspending their
own determination. After the court had adjourned without day,
the judges certified to the lieutenant-governor, that they were of
opinion that the prisoner was a proper subject for his majesty's
pardon. This the lieutenant-governor transmitted to the secretary
of state, with his own opinion; and an order, thereupon, passed,
that the name of the prisoner should be inserted in the next New-
gate

1770 While the assembly was sitting, the lieutenant-governor's publick letters acquainted him, that it was intended he should succeed sir Francis Bernard as governor-in-chief.

The advantages, in prospect, to himself and family, from such an appointment, would have been more than a balance to the ordinary difficulties which had attended that station; but now, if he looked forward, he had the prospect of a succession of uncommon difficulties, for a long time to come.

He was obliged, by his instructions, in a few weeks, to meet the assembly again at Cambridge. He knew that the principal members had come to a fixed resolution to do no business, unless he would remove it to Boston; and, though he was at no loss what his duty to the king in such case required of him, yet a controversy between the governor and assembly, however well founded on his part, will always render him unpopular.

The trials of the officers and soldiers must be kept off until the heats in the minds of the people should abate, and the delay would cause continual clamour. Whenever they came on, the verdicts of juries would be uncertain. If they should be against the prisoners, the lieutenant-governor would be under the necessity of suspending the execution of sentence until the king's pleasure could be known. Where the resentment of the people would fall, in that case, was plainly hinted in the newspa-

gate pardon, and this order was sent to the lieutenant-governor. This, it seems, had been the practice in granting pardons to prisoners in the counties in England, but was new in America; and the judges supposed something more was necessary to enable the prisoner to plead his majesty's pardon, and support his plea; but they were at length satisfied, and the prisoner having been brought into court early in a morning, when scarcely any persons, except the officers of the court, were present, pleaded his majesty's pardon, and was discharged, and immediately absconded.

pers,

pers, and there was no force left in government to resist it.

The violent spirit against importation of goods from England never ran higher, and the committees of merchants to inspect ships, stores, &c., were never more arbitrary and uncontrollable.

The lieutenant-governor had represented the transaction on the 5th of March, in his letters to the secretary of state, more favourably for the town than he could have done, if he had been then acquainted with the facts as they appeared in evidence upon the trials; he had, nevertheless, reason to expect, that compelling the king's troops to quit the town would cause such measures to be taken in England, as would increase the discontent of the people, and bring on fresh troubles. He stood absolutely alone. The house of representatives considered him as inimical to the province, for conforming to the king's instructions, and withstanding their attempts to compel him to give up the prerogative of the crown. The council, instead of supporting him against these attempts, had rather joined with the house against him. Every part of the executive powers of government either concurred in sentiment with the council and house in their opposition to parliament, or was so awed by them, as in no degree to counteract them.

He had before him the recent case of his immediate predecessor, who, by his zeal in the discharge of his trust, had so offended the people, as to be no longer thought a fit person to preside over them; and who, thereupon, had been recalled, after having spent twelve years of the prime and vigour of life, and without any material addition to his private fortune; and was now suffering more abuse in England for his fidelity, than, probably, he would have done, if he had betrayed his trust.

He found his health affected by the difficulties and
U vexations

(1770 vexations of a short administration of six or eight months, and was diffident whether he should have firmness of body, or mind, equal to the violent opposition with which he was threatened.

The designs of particular persons to bring about a revolution, and to attain to independency, were apparent ; but he did not think it possible for them to bring the people, in general, to declare for it ; and he hoped to pass the remainder of his days, without molestation, in the character of chief justice, which he had sustained about ten years, and which had afforded him more satisfaction than he had ever received in any of the three branches of the legislature.

He therefore determined, not only to desire to be excused from the honour intended for him, but to be superseded in his place of lieutenant-governor ; and he wrote to the secretary of state accordingly.

The election of members, through the province, for a new house, soon followed the dissolution of the old. The influence of Boston on the other towns had hitherto chiefly appeared in the continuance of such representatives as had adhered to the representatives of Boston. Tumults, riots, and other marks of discontent were hardly known, except in an instance, now and then, in some of the maritime towns. This is easily to be accounted for. The people felt no burdens. They were in some degree alarmed with apprehensions that their privileges were in danger, which, they relied upon their representatives, and upon the council elected by them, to remove, or guard against.

The instructions*, given this year by the inhabitants of Boston to their newly elected members, not only afforded a strong presage of the measures

* Appendix R.

of the house, but, in words more open and express 1770
 than had been before ventured on, indicated to government in England the design of a general revolt, and excited, together with the message from the house of representatives at the close of the last session, the first measures taken with an apparent design to guard against it; the troops sent before this time being intended merely for the purpose of suppressing mobs and tumultuous assemblies of the people, when the civil magistrate should call on them for that purpose.

It was, no doubt, unpleasant to the inhabitants of Boston, to see the concourse of all ranks of people, which had always assembled upon the day of election, carried to another town; and the select men, and many of the principal inhabitants, resolved to retain as much of the ceremony, and to draw as much of the concourse from Cambridge as was in their power. They desired Dr. Chauncy, as senior minister of the town, and zealously affected to the popular side, to preach a sermon in the usual place; invited many of the ministers of the country to their houses, and caused an ox to be roasted for the populace. The appearance, however, was decent at Cambridge, though the number of people was less than common.

Before the house would proceed to the election of councillors, they agreed upon a remonstrance, and appointed a committee to present it to the lieutenant-governor; but, after he had approved of the speaker, he left the chair, and they had no opportunity of delivering their message; and therefore ordered a resolve to be entered upon their journal, that "their proceeding to election was from necessity, because the charter required it to be done on that day; protesting, nevertheless, against its being drawn into precedent at any time hereafter, or considered as a voluntary receding of the house from their constitutional claim."

1770 Several of the council, in the last election, died *, or had resigned †, and their places were now filled with others who had the characters of moderate men : the rest of the council were the same persons who had been elected the last year.

The lieutenant-governor was in some doubt whether he should not be suspected of courting favour with the people, and counteracting his predecessor, but, upon consulting such persons as were friends to government, as well as to him personally, he gave his consent to the whole number, except two. Mr. Hancock, one of them, came within the description of persons whom, by his instructions, he was bound to refuse, as having had a principal share in the meetings of the people in Boston. For the other ‡, he had other reasons. He hoped to soften the tempers of the people, and the measure, perhaps, had some effect with them ; but it had none with the house or council.

The former presented their remonstrance against the assembly's being held any where except in Boston. After having been acquainted, by a message from the lieutenant-governor, that he would not depart from his instructions, they resolved they would do no business unless they were removed, six § only dissenting, when one hundred and two were present.

They then voted the reasons for their refusal, which they caused to be printed, and ordered their proceedings to be laid before the council, desiring they would take them into consideration, and do what to them should seem meet.

Mr. Otis, who, for eight or nine years, had greater influence than any other member, had been laid aside at the last election for the town, and Mr.

* John Hill, Royal Tyler, and Benjamin Lincoln, esqrs.

† Gamaliel Bradford, and Joseph Hawley, esqrs.

‡ Jerathmeel Bowers.

§ Timothy Ruggles, Daniel Oliver, John Worthington, Benjamin Day, Elisha Porter, and John Ingersoll.

Bowdoin

Bowdoin had been chosen in his stead ; but, upon 1770
Mr. Bowdoin's being elected a councillor, Mr. John
Adams succeeded him in the house. From this
time, Mr. Samuel Adams may be considered as the
most active member in the house. Mr. Hawley,
member for Northampton, was equally, and perhaps
more, attended to ; but Mr. Adams was more assi-
duous, and very politically proposed such measures
only, as he was well assured Mr. Hawley would
join in.

Mr. Bowdoin was without a rival in the council,
and, by the harmony and reciprocal communications
between him and Mr. S. Adams, the measures of
council and house harmonized also, and were made
reciprocally subservient each to the other ; so that,
when the governor met with opposition from the
one, he had reason to expect like opposition from
the other. Mr. Bowdoin's father, from a very low
condition in life, raised himself, by industry and
economy, to a degree of wealth beyond that of any
other person in the province, and, having always
maintained a fair character, the attention of the
people was more easily drawn to the son, and he
was chosen, when very young, a member for Boston,
and, after a few years, was removed to the council.
He found more satisfaction in the improvement of
his mind by study, and of his estate by economy,
than in the common business of the general assembly,
and had taken no very active part during the admi-
nistrations of Mr. Shirley and Mr. Pownall. In
general he was, in those times, considered rather as
a favourer of the prerogative, than of the opposition
to it. But Mr. Temple, the surveyor-general of the
customs, having married Mr. Bowdoin's daughter,
and having differed with governor Bernard, and
connected himself with Mr. Otis, and others in the
opposition, Mr. Bowdoin, from that time, entered
into the like connexions. The name of a friend to
liberty

1770 liberty was enough to make him popular. Being reserved in his temper, he would not have acquired popularity in any other way. His talents for political controversy, especially when engaged in opposition, soon became conspicuous. He had been used to metaphysical distinctions, and his genius was better adapted to entangle and darken, than to unfold and elucidate.

The act of parliament laying duties on wines, &c., and the proposed stamp act, then engaged the attention of the colonies. Mr. Bowdoin, though of the council, greatly encouraged, if he did not first propose, the association for leaving off the custom of mourning dress for the loss of deceased friends; and for wearing, on all occasions, the common manufactures of the country. He found his importance to be much increased by the removal of the lieutenant-governor from the council, and he was the principal cause of the council's acceding to the demand of the house, that the lieutenant-governor should be excluded from the debates of council, at which all former lieutenant-governors had been present as often as they thought fit.

Mr. S. Adams's father had been one of the directors of the land bank, in 1741, which was dissolved by an act of parliament. After his decease, his estate was put up to sale by publick auction, under authority of an act of the general assembly. The son first made himself conspicuous on this occasion. He attended the sale, threatened the sheriff to bring an action against him, and threatened all who should attempt to enter upon the estate, under pretence of a purchase; and, by intimidating both the sheriff and those persons who intended to purchase, he prevented the sale, kept the estate in his possession, and the debt to the land bank company remained unsatisfied.

He was afterwards a collector of taxes for the town

town of Boston, and made defalcation, which caused 1770 an additional tax upon the inhabitants.

These things were unfavourable to his character, but the determined spirit which he shewed in the cause of liberty would have covered a multitude of such faults. He was, for near twenty years, a writer against government in the publick newspapers; at first, but an indifferent one: long practice caused him to arrive at great perfection, and to acquire a talent of artfully and fallaciously insinuating into the minds of his readers a prejudice against the characters of all whom he attacked, beyond any other man I ever knew. This talent he employed in the messages, remonstrances, and resolves of the house of representatives, most of which were of his composition, and he made more converts to his cause by calumniating governors, and other servants of the crown, than by strength of reasoning. The benefit to the town, from his defence of their liberties, he supposed an equivalent to his arrears as their collector; and the prevailing principle of the party, that the end justified the means, probably quieted the remorse he must have felt, from robbing men of their characters, and injuring them more than if he had robbed them of their estates.

Mr. Hawley was a native of Northampton in the county of Hampshire. His mother was sister to colonel Stoddard, who, all his life, had great influence in that county; and the nephew derived some of his importance from the uncle, but more from his own strong natural parts, improved by a liberal education, and the study and practice of the law. He had a very fair character as a practitioner, and some instances have been mentioned of singular scrupulosity, and of his refusing and returning fees when they appeared to him greater than the cause deserved. He was strict in religious observances. Being upon his return home from a journey, the sun set,

1770 set, upon a Saturday evening, when he was within a few miles of his house. He remained where he was until the sun set the next day, and then finished his journey. He was, however, violent in his resentments. He had been at the head of an opposition to the minister of the town where he lived, and the chief cause of his leaving the town and removing into another colony. In a few years after, he made a publick acknowledgment of his unwarrantable conduct in this affair, which he caused to be published in the newspapers. This ingenuous confession raised his character more than his intemperate conduct had lessened it. He was subject to glooms, which confined him, and rendered him, while they lasted, unfit for business. Men of this habit, when the glooms are off, frequently go into the contrary extreme; but he always maintained great decency and propriety of behaviour, with the appearance of gravity and seriousness, without any mixture of levity or undue freedom. He was more attended to in the house than any of the leaders, but less active out of it. He was sometimes carried by strength of passion farther than he could justify, but had too much virtue to go all lengths, and was the less fit for a complete partisan; and for this reason, probably, he found it necessary to decline the employments and honours offered him, and to retire from business when his popularity was at the highest.

Mr. John Adams was a distant relation and intimate acquaintance of Mr. Samuel Adams. After his education at the college, he applied to the study of the law, a short time before the troubles began. He is said to have been at a loss which side to take. Mr. Sewall, who was with the government, would have persuaded him to be on the same side, and promised him to desire governor Bernard to make him a justice of peace. The governor took time to consider of it, and having, as Mr. Adams conceived,
not

not taken proper notice of him, or given him offence 1770 on some former occasion, he no longer deliberated, and ever after joined in opposition. As the troubles increased, he increased in knowledge, and made a figure, not only in his own profession, but as a patriot, and was generally esteemed as a person endowed with more knowledge than his kinsman, and equally zealous in the cause of liberty; but neither his business nor his health would admit of that constant application to it, which distinguished the other from all the rest of the province. In general, he may be said to be of stronger resentment upon any real or supposed personal neglect or injury than the other; but, in their resentment against such as opposed them in the cause in which they were engaged, it is difficult to say which exceeded.

His ambition was without bounds, and he has acknowledged to his acquaintance that he could not look with complacency upon any man who was in possession of more wealth, more honours, or more knowledge than himself.

Mr. Hancock's name has been sounded through the world as a principal actor in this tragedy. He was a young man whose father and grandfather were ministers in country parishes, of irreproachable characters, but, like country ministers in New England in general, of small estates.

His father's brother, from a bookseller, became one of the most opulent merchants in the province. He had raised a great estate with such rapidity, that it was commonly believed among the vulgar that he had purchased a valuable diamond for a small sum, and sold it at its full price. But the secret lay in his importing from St. Eustatia great quantities of tea in molasses hogsheads, which sold at a very great advance; and by importing, at the same time, a few chests from England, he freed the rest from suspicion, and always had the reputation of a fair trader.

1770 trader. He was also concerned in supplying the officers of the army, ordnance, and navy, and made easy and advantageous remittances. When he died, he left to his nephew more than fifty thousand pounds sterling, besides the reversion, after the death of his widow, of twenty thousand pounds more.

The uncle was always on the side of government. The nephew's ruling passion was a fondness for popular applause. He changed the course of his uncle's business, and built, and employed in trade, a great number of ships; and in this way, and by building at the same time several houses, he found work for a great number of tradesmen, made himself popular, was chosen select man, representative, moderator of town meetings, &c. He associated with those who were called friends to liberty. His natural powers were moderate, and had been very little improved by study, or application to any kind of science. His ruling passion kept him from ever losing sight of its object; but he was fickle, and inconstant in the means of pursuing it; and though, for the most part, he was closely attached to Mr. Samuel Adams, yet he has repeatedly broken off from all connexion with him for several months together. Partly by inattention to his private affairs, and partly from want of judgment, he became greatly involved and distressed, and the estate was lost with much greater rapidity than it had been acquired.

In governor Burnet's administration, the house disputed his authority to remove the assembly from Boston. The council, in that day, differed from the house, and supported the authority of the governor. It is without doubt, that the council, in any year from that time, in 1728, until the year 1766, would have done the same. Such changes had been made in the council since 1766, and the weight of the house was so much increased, that, though the reason of the thing continued the same, the council had become

become equally zealous with the house, not only in 1770 declaring against the authority of the governor to remove the assembly, but against his observance of the king's instructions, when they did not correspond with his own judgment.

It is far from my design to cast any reproach upon the council, or house of representatives, by distinguishing them from other bodies of men who have been engaged in political contests. It has been the general practice, in all ages and all countries, to make use of plausible and specious arguments, though often inconclusive, to promote the end designed to be attained by such contests.

It would be tedious to go into the particulars of all the messages and answers which passed upon this occasion. I will, therefore, give the sum of the controversy in as few words as I am able.

The charter of Massachusetts Bay reserves to the crown the authority of "appointing and commissioning" a governor, which governor is to be under oath for the due and faithful performance of his trust. By a former charter, which had been vacated, a governor was to be elected by the company, together with a deputy-governor, and eighteen assistants; but no power was given to the governor to do any act of government whatever, except that of administering oaths, without the deputy-governor and assistants, he being no more than "*primus inter pares*." By the new charter, a council, or assistants, are also constituted, together with a house of representatives; and a general court or assembly is to be held on the last Wednesday in May, in every year, and at such other times as the governor shall think fit and appoint. This constitutes the legislative power, of which the governor is one branch only. The governor also, with the assistants, or seven at least, may, from time to time, hold a council for ordering and directing the affairs of the province, which constitutes the executive power.

There

1770 There are also other powers granted to the governor, by himself alone; particularly full power and authority to adjourn, prorogue, and dissolve all general assemblies, met and convened according to charter, as he shall judge necessary; also full power by himself to appoint all military officers, to put the inhabitants in warlike posture, march them, &c., and to nominate, and, by advice of council, appoint judges, justices, &c.

The several royal commissions from the charter had authorized governors to exercise their powers, according to the charter, and to such instructions as they should receive from the crown.

There being no particular directions given by charter for the manner and form in which the assembly should be convened, the form of a writ to be issued by the governor, directed to the sheriffs, and also the form of a precept from the sheriffs to the select men of the several towns in their counties, and the form of a return to be made by the select men, and of a certificate to be given by the constables of their having notified the person elected, were all prescribed by a law of the province.

In the form of the writ, precept, and return, the town-house in Boston is named as the place where the assembly is to be held and kept. The writ is also said to be given at Boston, and is to be countersigned by J. A., secretary, the initial letters of the name of the then secretary. The precept from the sheriff is "Suffolkshire," is to be signed by the sheriff of the county of Suffolk, and is addressed to the select men of Boston, to warn the inhabitants of Boston; and the notification is to be signed by a constable of Boston.

The assembly had been held at Boston every year, from 1692 until 1721, when, the small pox being in Boston, the members of the house were afraid of the distemper, and, by his own authority, governor Shute removed the assembly to Cambridge. The next session

session being held at Boston, the house and council 1770 voted that the assembly should be removed to Cambridge. He refused to consent, because it was giving up his prerogative. He called the next assembly to sit at Cambridge, the small pox being in Boston. Before any other business was done, he gave his consent to a vote that had passed the two houses, reciting the reason of his calling them there, and their acquiescence, and declaring that, for the reasons aforesaid, the assembly shall and may be now held at Cambridge, no exception or advantage to be taken hereby respecting the power of removing the assembly from place to place. By this equivocal vote, the governor imagined that he had preserved his authority entire. In 1728, Mr. Burnet, from the opposition he met with from the inhabitants of Boston in his controversy concerning the fixing of a salary upon the governor, removed the assembly to Salem, where, for some weeks, the house did not proceed to business; and it was then urged, that the writ for convening the assembly established the town house in Boston as the place for holding it. To this he answered, that those words in the writ were mere form, and, like other words in it, *exempli gratia* only*. They then proceeded to business. He afterwards removed them to Cambridge. They had several times, besides, sat at Cambridge and Concord, when the small pox had been in Boston. The king directed Mr. Belcher to meet them at Salisbury in 1737; and, since the year 1728, no doubt had been made of the authority of the governor to appoint place, as well as time, for the meeting of the assembly.

Both council and house now determined to make a serious affair of it, and both forbore to do any business;

* This law being laid before the attorney and solicitor general, they gave the same opinion; and, indeed, it could not admit of a doubt.

and

1770 and the house expressly resolved, that it was not expedient to do business while they were restrained from sitting in Boston. Their arguments may be reduced to two heads,—that the removing the assembly was contrary to the charter,—and contrary to the law of the province. It was acknowledged, that there are no express words in the charter, directing where the assembly shall be held; but it was contrary to charter, that the lieutenant-governor should remove it in consequence of instructions from the king. The house doubted whether it ever was his majesty's pleasure that the assembly should sit at Cambridge, and suppose it done by an arbitrary mandate of the ministry; but, admitting it to be by the king's instruction, still the power given by the charter to the governor, solely, to adjourn, prorogue, and dissolve the assembly, was a grant "in favour of the commons," and if an instruction should supersede such a grant, it would be vacating the charter. The council say, it is a *full* power to the governor to adjourn, &c., as he shall judge necessary,—that it is "wholly" in the governor, and it would be a palpable contradiction to suppose it under the control of instructions. Both council and house admit that there may be instances when the governor ought to obey royal instructions; but not in any case when it shall be inconvenient and injurious to the province; and the removal of the assembly to Cambridge, they say, was such a case. The prerogative itself, they urge, is to be exercised for the good of the nation; and the house add, that the people and their representatives have a right to withstand the *abusive* exercise of a legal and constitutional prerogative of the crown; that, in such case, there is, according to the great Mr. Locke, no appeal but to heaven; but they would not be understood that, "at present," there is occasion to proceed to such extremity. The governor had a right to

to hold the court at what time he pleased, (and the 1770 council say, that the power of adjourning and proroguing must necessarily include "place" as well as time); the house had also a right to act the part they were to take, in making laws, &c., at such time as they thought fit; and, in answer to the lieutenant-governor, who had intimated to them, that, when he had done his part in convening them according to charter, it was incumbent on them to proceed to the business of the province, they ask him whether this is not, in a degree, the very doctrine of Tresilian, and others, who had judgment as in cases of high treason, for declaring that the king had the governance of parliament, and might appoint what shall be first handled, and what next, &c.

Both council and house also take notice of the province law, which establishes a writ, &c., for convening the assembly, and insist, that, if it does not amount to a strictly legal establishment of the place, it, at least, furnishes a rule by which the governor ought to conduct himself.

To these capital exceptions, they added the inconvenience of the place, being distant from their records, and unfit for the entertainment of the members. It was prejudicial also to the interest of the college, to hold the assembly within the walls; and furthermore, in Cambridge, the members could not have that communication with their constituents, and be benefited by the reasoning of the people without doors, as in Boston. This is an epitome of all the exceptions in the many pages of the resolves of the house, and messages both of council and house, in the controversy*.

On these exceptions the lieutenant-governor observed, that with as much reason they might except

* See the principal messages of the lieutenant-governor, council, and house, Appendix 8.

to

1770 to the authority of the king to give instructions in many, if not all other cases, as in this of the removal of the assembly. The crown, neither by charter, nor in any other way, had ever divested itself of its authority to instruct its governor; and a practice of nearly fourscore years ought to have prevented his majesty's council from taking exception to it. They had no room to suggest that such instructions were the mandates of ministry only. The affairs of America were become too important to escape the immediate attention of the king; and every order from the secretary of state, signifying his majesty's pleasure, was to be considered as coming, mediately, from the king himself. The *full* power given to the governor, which they call *sole* power, and the authority to act as he shall judge necessary, or according to discretion, might as well be adduced as an objection to instructions in all other cases as in this; for the general power to the governor being full, it may, with as much propriety as the particular instances, be said to exclude the king. The word "full" was undoubtedly annexed in this case, because, under the former charter, he had "a part only" of this power, the general court being convened, adjourned, &c., by an act of the governor and assistants jointly, in which he had only one voice. The grant of the charter was an act of grace and favour from the crown; but the restraint of this power of convening the assembly to the governor alone, a power in which the people, by their representatives, had had a share in time past, was very improperly said to be a grant "in favour of the commons." If there was any ground for their exception, it extended to, and ought to have been taken against, the commissions of all governors since the date of the charter, which limited their powers by instructions which they might from time to time receive. The prerogative, and all other powers of government, must

must be exercised for the publick good; but if the king reserved a power of appointing a place where the assembly should meet, he reserved also the power of determining which place was most for the publick good; and if, at the time of granting the charter, the agents for the colony had declared their submission to the authority of the governor to appoint the place for holding the assembly, with this reserve, that the assembly should be judges whether such place was most for the publick good, the charter would not have passed the seals. If Tresilian had only asserted, that the king had authority to assemble the parliament at such time and place as he thought proper, and that, if the commons should refuse to assemble, or to do the necessary business of the kingdom when assembled, they would fail of performing what was incumbent on them, he would not have been called in question. The words "town house in Boston," in the writ, were mere form, and the general practice of sitting in Boston could not establish such a rule for the conduct of the governor, as to justify him in not observing the king's instructions. The expense of one or two days' wages of the members would pay the charge of removing all their records and papers to Cambridge, and of keeping them there with safety; and it was in their power, if they thought fit, to prevent the students of the college from attending their debates. They were sent by their constituents to assemble together, that they might have the benefit of their reasoning "within doors," and not the reasoning of any particular town or place "without doors."

The lieutenant-governor flattered himself, that, after the house had, with so little difficulty, gone on with business at Cambridge last year, he should soon be able to hold the assembly at Boston again; but the messages of council and house, this session,

X

blasted

1770 blasted all his hopes. Besides the denial of the king's authority to instruct the governor, the removal of the assembly was called "a wanton exercise of power;"—the ministry were charged with intending to insult the assembly, and with treating them with unexampled indignity,—an instruction to the governor, in 1768, was called an "impudent mandate;" and many other expressions found their way into the resolves and messages of the house, which the lieutenant-governor had reason to expect would give great offence to the king and his ministers: but what was more, in the present dispute, than all the rest, they declared, that they hoped, by exerting the power which the constitution gave them of determining the proper time to do business, to convince the lieutenant-governor, and the ministry, of the necessity of removing the assembly to Boston. This was bidding defiance*.

After the session had continued near four weeks, the lieutenant-governor prorogued the assembly †. They met again at the time ‡ and place appointed, and sat seven or eight days, preparing a message, in which they declared their adherence to their former resolution, and gave their reasons for it, and then were further prorogued.

In this interval, an occurrence, alarming to the people in general, and which their leaders proposed to make a new subject of controversy with the lieutenant-governor, disposed them to recede from their former resolutions of doing no business. Near a fortnight, however, was spent before they would determine. An order passed the house for all the

* A judgment ought not to be made of the body of the council, much less of the representatives, and still less of the body of the people, from the votes and messages in this and other controversies. They were the compositions of a very few, probably most of them of one person in each house; and the just exceptions to them were not attended to, perhaps not fully understood, by the major part.

† June 25th, 1770.

‡ July 25th, 1770.

members

members to attend. A day of solemn prayer and 1770 humiliation was observed by the two houses, and the two ministers of the town of Cambridge were desired to carry on the religious exercises : and the next day was appointed for the consideration of the lieutenant-governor's message to them.

This measure had the effect of inducing a great part of the people to suppose an affair, which was plain, and in itself of no importance, to be difficult, and very momentous ; but a great part of the most sober and sensible people disapproved of the measure, as carrying too much the appearance of making a shew of religion, to promote the designs of political party. After a preface, that they were under new, additional, and "insupportable" grievances, which called for the immediate exertion of the powers vested by the constitution in the general assembly, they resolved to proceed to business, in order "radically" to redress grievances ; protesting against the necessity they were under of doing business any where except in the town house in Boston*.

The principal, if not the only, additional grievance was the exchange of a garrison, at Castle William, of inhabitants in the pay of the province, for a garrison of regular troops in the pay of the crown.

General Gage had written from New York to the lieutenant-governor, to desire his opinion upon the expediency of placing a garrison of the king's forces in the castle, in the room of the provincial garrison. The lieutenant-governor, supposing this to be the general's own motion, as a regiment was then at the castle in barracks unemployed, gave his opinion that it was not expedient ; and the general, in a second letter, having signified that he was of the same opinion, the lieutenant-governor expected, that, if there had been any such design, it was laid aside. But in a few weeks after, he received the copy of an

* Fifty-nine in favour of the vote, and twenty-nine against it.

1770 order of the king in council, determining that a garrison of the king's troops should be placed in Castle William, and the provincial garrison dismissed; which order was accompanied with a letter from the secretary of state, signifying his majesty's pleasure to the lieutenant-governor, that he do not fail, so far as depends on him, to carry the order into execution, as soon as he shall know from general Gage the officer appointed to take the command of such garrison. The general, at the same time, appointed lieutenant-colonel Dalrymple for that purpose.

This was one of the most difficult affairs to manage, that happened during the lieutenant-governor's administration.

The charter reserved to the governor the power, which constitutionally was in the king, over all forts and garrisons in the province. In the exercise of this power, there was no doubt that the governor was subject to the directions of the king, but it might well be doubted, whether, consistently with the charter, he could divest himself of the supreme command of any fort, by assigning it over to any other person. The castle having been built at the charge of the province, and a great part of the warlike stores, and all the ammunition, of which there was a large quantity, having been purchased by the province, the people were apt to consider all as their own property, as much as the money in the province treasury; and the idea of the lieutenant-governor's having given the power over it out of his own hands would set them in a flame; and all imaginable pains would be taken to raise, and fix this idea. The lieutenant-governor, therefore, at first determined to write to the general, and fully to express his sense of his retaining the same authority over the castle, as if the provincial garrison had remained, and to delay the execution of the order; but before the express was ready, he altered his mind.

mind. It was very probable, that, before he could 1770 receive an answer, the design would by some means or other be known, and the execution of it be rendered more difficult, if not impracticable; and all the consequences of the delay would be charged upon him. He therefore resolved to carry it into execution, while in his power so to do; and sent an order in writing to the commanding officer of the provincial garrison, to take off all the sentinels and guards from their posts, and to admit in their places, such of the king's troops then upon the island as lieutenant-colonel Dalrymple should appoint. In a few hours after this order, he went himself to the castle, and, calling for the keys, in the presence of the commissioners of the customs and many other persons, he delivered them to lieutenant-colonel Dalrymple, and, by virtue of the authority derived from his commission to govern the province according to the royal charter, committed to him the custody of the fort. The formality of delivering the keys had been the usual way of signifying the exchange of command, though a commission in form accompanied, or sometimes had followed*. The lieutenant-governor, at the same time, directed the storekeeper of the former garrison to continue in his place, and to retain in his custody all the arms and military stores, to be delivered only pursuant to his orders; and also appointed another officer to remain, and to make the signals upon the appearance of ships, and to make return to the lieutenant-governor, of all vessels passing by the fort. He acquainted general Gage with the manner of his committing the custody of the fort, that he might preserve entire his authority over it; and he had the satisfaction of being informed in a few months after, that his caution

* In this case it did not; but upon lieutenant-colonel Dalrymple's leaving the province, the lieutenant-governor called for the keys, and delivered them to his successor in the same way.

and

1770 and conduct in the whole of the affair was approved by the king.

Before he went to the castle, he met the council, and, having enjoined them secrecy upon their oaths as councillors, he acquainted them with the orders he had received, not for their advice whether or how he should execute them, as they were entirely military, but to satisfy them that he should leave no room for exception, and particularly that no part of the ammunition and warlike stores should be made use of without his special direction.

He soon found that all his precaution was necessary.

In his speech at opening the next session* of the assembly, he acquainted them with his having exchanged the garrison at the castle, by order from the king, and that there was no occasion for the house to make the usual establishment. They had no sooner determined to do business, than they sent him a very angry message, signifying their opinion, that very false representations must have been made to their sovereign, and that they have a right to expect a communication of them from the lieutenant-governor, if he is privy to them; and, as the charter empowered and required him to commit the custody of the castle to such persons as to him shall seem meet, they begged to know whether he still held the command of that important fortress. He gave them an answer, that he was privy to no false representations; that he had transmitted to the secretary of state a copy of the message of the last house of representatives, and also a printed copy of the instructions from the town of Boston to its members, and that he had reason to believe that the message and instructions, without any other representations, were the immediate occasion of his ma-

* October 2nd, 1770.

jesty's orders ; that he kept the charter in his mind 1770 during the whole transaction at the castle, and had given up none of their rights. This was too general, and they sought for a more particular account of the manner of transferring the command, but in this he declined gratifying them, knowing they would find somewhat to cavil at if ever so perfect ; but upon their question, whether he still held the command, he gave them a full answer in the affirmative. They then gave him notice by a committee, that they should proceed to examine witnesses present at this transfer, and that he might be present at the examination, if he thought fit. This he did not think in character, but did not think proper to interrupt them. They examined the commanding officer, and the chaplain of the former garrison, neither of whom had so perfect a remembrance of the form of words made use of by the lieutenant-governor, as to speak positively to them. The house thought fit, however, in a message, to say to him, that, merely in obedience to instructions, he had divested himself of a power of governing, which by the charter was vested in him for the safety of the people, and they warmly remonstrated against it as a great grievance ; and earnestly prayed him, in tenderness to the rights of the people, to take effectual measures, that the power of garrisoning the castle might be restored to the governor of the province, to whom by charter it belongs.

It was expected that this affair of the castle would have caused much greater agitation among the people ; and, notwithstanding the day of prayer kept by the two houses, it was thought proper to desire the lieutenant-governor, " from the practice of the province in times of publick distress and danger," as well as because of the great and insupportable grievances which the colonies in general laboured under, and had reason to fear, to appoint a day of solemn prayer

1770 prayer and humiliation throughout the province. It was the season, according to long practice, for a day of publick thanksgiving for the mercies of the past year ; and he had, a few days before, appointed a day for that purpose, and had recommended to the people to add to their praises, prayers for further mercies. This alone was sufficient cause for a refusal of their request ; but he informed them, that, had it been otherwise, he could not have appointed a day of prayer and humiliation from the reasons they had assigned.

After the declaration made by the house, that they were under new and insupportable grievances, such as induced them to depart from a resolution, taken a few weeks before, not to do any business unless the assembly should be removed to Boston, something further than this exchange of the garrison at Castle William, which the king had a clear constitutional authority to order, might have been expected, but no mention was made of any other "fresh" grievance. A grievance, however, of near thirty years standing was now first discovered, and was made the subject of altercation between the lieutenant-governor and the house.

The style of the authority by which laws were at first enacted after the date of the charter, was in the form following: "by the governor, council, and house of representatives, and by the authority of the same." Upon lord Bellamont's being appointed governor, it was altered to "by *his excellency* the governor, &c." and that form continued until the year 1742, when Mr. Shirley, the then governor, received an instruction from the king, to take care that for the future, in giving his assent to laws, the style should run, "by the governor, council, and house of representatives," without the addition of any other words. The cause of this instruction was matter of speculation, and was generally thought to have been a dislike to the title

title of "excellency" given to the governor, in laws 1770 which came before the king for his approbation; for it was not given to governors in any commissions, or writings whatever, from the crown, nor commonly in any letters from the publick boards; but it is probable that colonel Bladen, who had then, and for many years before, great influence at the board of trade, had caused the latter words in the style to be left out, because of its pompous appearance, and too near resemblance of the style of acts of parliament, whose authority, he used to say, the Massachusetts province designed to cast off; and also because the words, "by the authority of the same," seemed to exclude the king, whose approbation was necessary. But, whatever was the cause, the alteration was considered as of no importance, admitted without hesitation, and had been conformed to ever since.

The house now thought fit to alter the style, and sent bills to the council for their concurrence, with the addition of the words, "in general court assembled." This caused a message from the lieutenant-governor, to put the house in mind of the deviation, and that he should be obliged to conform to his instruction, which had been observed for near thirty years without the least inconvenience.

They declared in their answer, that, after serious consideration, they were of opinion, that the words were not mere matter of form, but of substance, and necessary to the validity of every act,—that it ought to appear from the parchment roll, that the three branches of the legislature were assembled in general court, for no *dehors* evidence could be admitted to prove it,—that this was the invariable style in acts of parliament,—that it had been so in the province until within the last thirty years, and they prayed the lieutenant-governor to admit them, to save time and to prevent publick charges.

Upon

1770 Upon his answer, and refusal to depart from his instruction, they sent for their bills from the council, took out the exceptionable words, and omitted them in all the other bills passed in the session ; notwithstanding which, they afterwards, in a long message, complain, that, by virtue of instructions, they have been brought under a necessity of passing laws in such form as, in their opinion, renders them ineffectual. In one of their messages, they had declared themselves unable to conceive of any reason why the words should be disagreeable to the king, and, in an answer to it, the lieutenant-governor had observed that he was not acquainted with the special reason* which induced the king to lay this restraint upon the governor ; perhaps it was merely because the words were unnecessary, and redundant. They inquire,—“Where then is the freedom of the governor of the province, if he is to govern twenty-eight years together by positive instructions from other persons at three thousand miles distance, without being able, in all that time, to discover any reasons for them ?” The reasons which induced the king’s ministers to dictate this instruction, and which induced governors to be so fond of it, they feared, were very different from those suggested,—“the true reason, they feared, was to reduce the province to the footing of little corporations in England.” They assert it to be certain, and obvious, that the style of a law, which expresses the governor, council, and house of representatives, does not express that authority which by charter hath authority to make laws, because they must be convened in general assembly ; and ask whether a bill, passed by the house in the present session, and, after a prorogation of the general assembly, concurred by the council, and consented to by the governor, could become a law.

* No reason was assigned in the instruction. .

The

The lieutenant-governor observed to them, that if 1770 he had been of opinion that the words were essential, he would either have refused his assent to the bills, lest a greater mischief should arise from a defect in the laws than from the want of them; or if he had given his assent, he would certainly have done nothing to prompt the people to deny their validity; that he believed the people would be surprised to find their representatives had passed so great a number of laws, and, immediately after, had pronounced them invalid; which was doing all in their power, as a house of representatives, to induce a refusal to submit, not to them only, but to all other laws which have been made for nearly thirty years past. He observed also, that they had not considered their own powers, and the nature of their existence and political capacity; otherwise they must have discovered that an act of governor, council, and house of representatives, cannot be, except when in general court assembled,—that the instant the general court is dissolved, the house is annihilated, and, upon a prorogation, there is a temporary cessation and incapacity of exertion of any sort of powers; and they might as well suppose the governor and council to concur with an act of a house of representatives which never existed, as of a house which ceased to exist.

There is no instance, in the history of Massachusetts Bay, of opposition to the governor from the house, upon a point so frivolous and unimportant in itself, and supported by such feeble pretences, as this which has been last mentioned. It put a stop, notwithstanding, to the chief business of the assembly a whole week, and the members of the first characters for knowledge in the law were much engaged in it. Had the point been carried, it could not have been of the least service in itself, but the contest had a tendency to keep the spirits of the people

1770 people in motion, and prepared for more important contests.

In this session the house appointed Dr. Franklin their agent in England, in the room of Dennis De Berdt, esq., deceased, and in case of the death or absence of Dr. Franklin, Arthur Lee, esq., was appointed to act in his stead. Dr. Franklin was a native of Boston, but had removed, in early life, to Philadelphia, and, for many years, had been agent for the province of Pennsylvania. He had corresponded with the principal conductors of the controversy with parliament in Boston, from the first stir about the stamp act; and they professed, in all the important parts of it, to govern themselves by his advice.

A few weeks before the commencement of this session, Dr. Cooper, one of the ministers in Boston, had received from Dr. Franklin in London, a letter dated June 8th, 1770, in which he says, that, after a thorough consideration of the original charters to the colonies, and the conduct of the crown and nation towards them until the restoration, he was fully convinced that they were originally constituted distinct states, and intended to be continued such. Since that period, the parliament had usurped an authority over them, which before it had not. They had, for some time, partly through ignorance and inattention, and partly from weakness and inability to contend, submitted to the usurpation; but he hoped, when their rights should be better understood in England, they would be able, by a prudent and proper conduct, to obtain from the equity of the nation a restoration of them. In the mean time, he wished those expressions, "the supreme authority of parliament,"—"the subordinacy of our assemblies to the parliament," and the like, (which in reality mean nothing, if our assemblies have a true legislative authority,) may be no more seen in any publick pieces:

pieces: they tend to confirm a claim, founded on 1770 usurpation of subjects in one part of the king's dominions to be sovereigns over their fellow subjects in another part of his dominions; whereas these several parts are only connected as England and Scotland were before the union. This kind of doctrine the lords and commons in England would deem little less than treason against what they think their share of the sovereignty over the colonies; but it seemed to him, that those bodies had been long encroaching on the rights of their and our sovereign, assuming too much of his authority, and betraying his interests. In the same letter, and from the same principle, he declares that he is clearly of opinion that the standing army kept up in the province in time of peace, without the consent of the assembly, is not agreeable to the constitution; and he concludes the letter with expressing his hopes that those detestable murderers had quitted the province.

The assertion in this letter, that the conduct of the crown and nation towards the colonies, until the restoration, shews them to be intended for distinct states, or states independent of parliament, contradicts the whole course of historical facts, both on the part of the crown and of the parliament, from which must be collected the sense of the nation. It was also contrary to the sense of by far the greater part of the people of the province, and it looks as if the person to whom it was written thought so; for, in the answer to it, after observing that it came most seasonably, he adds, that he had communicated it with great caution, knowing the delicacy the times require; that he had, however, allowed some of the leading members of the house, in confidence, to read the sentiments, who expressed the highest satisfaction; and, though it was objected, that he was agent for other provinces, and that they ought to increase the number of their friends, and that he, and his
son,

1770 son, the governor of New Jersey, held places of importance under the crown; and the house, from various causes, had been much divided respecting an agent, yet such was their opinion of his abilities and integrity, that a majority readily confided the affairs of the province, at that critical season, to his care.

Mr. Lee was known to the house as the reputed author of many publications, in England, in favour of the American cause, and in opposition to ministry, under the signature of Junius Americanus.

The house also appointed a committee to communicate intelligence to their agent, and others, in Great Britain, and to the speakers of the several assemblies through the continent, and to confer with a committee of council appointed to correspond with their agent, as far as they shall judge necessary. Thus the governor was wholly excluded from the share which, by the constitution, was assigned him in all acts of government. Both council and house of representatives, by committees, kept an authority in being, when, by prorogation, and perhaps dissolution, their own powers were at an end. Nothing could be more unconstitutional and unwarrantable. It was not in the power of the lieutenant-governor to prevent such votes of council, or house. They passed suddenly, without previous notice of the intention. Government, in England, might well be alarmed. The governor was instructed not to consent to any votes for paying such agents for their services, and, when their appointments were offered to be registered at the publick offices, they were refused. They appeared, notwithstanding, as agents, were heard, and attended to, on many occasions.

The secretary of the province met with hard measure from the council during this session.

The morning after the vote of the council, advising the lieutenant-governor to desire the commanding officer

officer of the troops to remove them to the barracks 1770 at the castle, he asked the secretary to recollect; as well as he could, what passed in the debate at council, and to commit it to writing, intending to send it to England, to shew in the fullest manner the reasons for the lieutenant-governor's complying with their advice, and not with any intention to set the council in general, or any particular member, in an unfavourable light. The secretary informed him; that, of his own mere motion, and for his private satisfaction, he had done it the evening before, while the debates were fresh in his mind. After he had transcribed and corrected the minutes, he made oath to them; and they were transmitted at the same time with the copies of the votes or minutes of council, and other papers relative to the transaction, not to the secretary of state; but to governor Bernard, who, at that time, continued governor of the province.

By some means or other, they were obtained from him, and printed in London, in a pamphlet, to vouch some of the facts contained in it. As soon as it came to the knowledge of the council, they appointed a committee to take the affair under consideration. Besides the irregularity, and, what they called, breach of trust, in taking minutes, and giving a deposition of the debates in council, the secretary was charged with injuring and abusing the members of the council, and the council came to several resolves accordingly, which were published, and also made matter of record upon the council books. The alleged breach of trust was his "secretly" taking minutes of, and making oath to, the debates of the council, had before three officers of the crown, who were under no obligations to secrecy, but spoke freely of every thing which passed there. There was still less pretence for such charge, since he had communicated his minutes to the governor only, whose officer he was, as well as the council's, and who had required

1770 required him so to do. The abuse upon the members of the council was no more than this. The secretary, upon observing that the publick minutes of council did not express the whole of his private minutes, to account for the variance, deposed, that he had made his publick minutes in a form which was allowed "strictly" to express the truth; but, as it would not stand well on the council records, one of the council prepared another form, which was substituted. The truth of this assertion was not denied; but the council resolved it to be a suggestion, that "because" the draft was allowed strictly to express the truth, it would not stand well upon the council records, and was, therefore, rejected by the council; and that, by such suggestion, he had injured and abused the members, and reflected great dishonour on the board. But the principal motive to this inquiry, as appeared by the vote of council appointing a committee, was that part of the secretary's minutes which mentioned a declaration of Mr. Tyler, one of the council, that men of estates, and of religion, had formed their plan, part of which was to remove the troops out of town, and, after that, the commissioners; and that divers other gentlemen of the council adopted what Mr. Tyler had said, by referring expressly to it. The eight members of council who were present, all, except Mr. Tyler himself, declared upon their oaths, that they did not remember that he said any thing in council referring to the commissioners. Mr. Tyler swore that he uttered nothing in council purporting a plan to remove the troops previous to their firing upon the inhabitants; and afterwards added, that the assertion of Mr. Oliver, "that the deponent said there was a plan formed to remove the commissioners, or that it was any part of *such* a plan to remove them, is a gross misrepresentation."

Mr. Oliver desired that other persons present might

might be examined, and colonel Dalrymple declared, 1770 upon oath, that something was mentioned by some gentleman in council, about removing the commissioners, but he could not remember whether by Mr. Tyler. Captain Caldwell, of the *Rose* man of war, the deputy secretary, and his clerk, were all positive to the words spoken by Mr. Tyler.

Notwithstanding this positive evidence, the council, in stating the case, declare it probable that the witnesses misapprehended Mr. Tyler, who, upon the lieutenant-governor's asking what would become of the commissioners if the troops were removed, might express his sentiments on that head*, and occasion the mistake; and as none of the council heard the expression, in the form the secretary had minuted it, they could not adopt it. The council, however, did not think fit to resolve that the deposition of the secretary was a falsity or misrepresentation, but, nevertheless, from the frame of their report, which was soon transmitted to England, gave too great occasion and pretence to the writers in favour of their cause, to abuse a man conscientious and scrupulous to an uncommon degree, and to the person who signed his pieces, Junius Americanus, in particular, to stigmatize him with the infamous name of a perjured traitor†.

*The council added, "and, having so fair an opportunity, might also express his sentiments concerning the commissioners themselves, *and the low estimation in which they are held by people in general, not only here, but throughout the continent.*" There was not the least foundation, in any part of the evidence, nor in fact, for this insinuation, which was brought into the report by the person who composed it, merely for the sake of casting reproach upon the commissioners.

† Upon seeing this abuse republished in the Boston newspapers, the council seem to have been sensible that their report had, at least, given pretence for it, and, to redress the wrong as far as was in their power, they, by a resolve, declared the assertion to be false, groundless, and malicious; though the undoubted author of it was then a provisional agent for the house of representatives.

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(1770) The lieutenant-governor perfectly well remembered that Mr. Tyler, after saying that there was a plan laid to drive out the troops, added, that the commissioners would follow, or to that effect; but whether he meant that it was part of the plan, or his own sentiments, was doubtful; and it is not impossible that an equivocal expression was made use of, that the matter might be left doubtful*.

The chief cause of the strong resentment against the secretary was the use which had been made of his deposition, to destroy the designed effect of the narrative of the proceedings on the 5th of March, which had been drawn up and sent to England by one of the council, who had a principal share also in this persecution of the secretary. Resentment is never stronger than when it proceeds from opposition to party pursuits. All sense of guilt incurred by groundless and most injurious imputations upon characters is wholly lost.

The disposition which had appeared in many of the votes and acts of council, to promote the measures in which the opposers, not only of parliamentary authority, but of the prerogative of the crown, were engaged, had caused the constitution of the province by charter to come under the consideration of the king's ministers, and a change in the manner of appointing the council seems to have been intended, and the lieutenant-governor was called upon for his opinion upon the subject, and his reasons in support of it.

Notwithstanding the singular manner of appointing the council, yet, for more than seventy years together, they had with great firmness supported the

* Thus a pretence was made for charging the secretary with gross misrepresentation, because he had received an expression which would admit of a double sense, in that sense which the person who made use of the expression afterwards swore that he did not intend.

governor

governor in the due exercise of his constitutional authority, a very few instances excepted ; and they had given as little ground of complaint to government in England as any of the councils, in what are called the royal governments. From the year 1765, they had abated of this firmness : the house from year to year had left those persons out of the council who caused an obstruction to their measures, and others more compliant had been chosen in their stead. But this was not the sole, nor the chief cause of the change of measures in council. If the house had made no change of members, yet the greatest part of the council would not have had firmness enough to counteract the general voice of the people. The councillors appointed by the crown, in South Carolina, Virginia, and New York, favoured all popular measures, as much as the councillors in Massachusetts Bay, annually elected by the assembly.

Twenty years before this time, when nobody called in question the authority of parliament in any case whatever, such a change would have been submitted to ; but the alteration of charters, or established constitutions, in the colonies, was now as generally denied to be within the limits of parliamentary authority, as the imposition of taxes for the purpose of a revenue. Therefore, although some advantages might arise from a change in the constitution of the council, yet it might well be doubted whether they would countervail the disadvantages from the opposition which would be made to the measure, and the convulsion which would be caused by it. The lieutenant-governor was, perhaps, in some degree biassed by an attachment to that form of government under which he had always lived ; and flattered himself, that if the lost vigour of government could ever be restored, the councillors also would be such as they were at the beginning.

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1770 Whatever influenced him, he had always avoided giving an opinion in favour of this change in the constitution, and still continued to avoid it.

He saw, however, that the opposition to government was continually acquiring strength, and he had continually fresh evidence of the designs of the heads of it to attain to independency. The body of the people had not a wish to be separated from Great Britain; but they were persuaded that parliament assumed more than its constitutional authority, and they were easily brought to join in such means to prevent an undue authority, as must finally obtain the end proposed by their leaders, an exemption from all authority, and a total separation from the kingdom. The danger of such separation he thought that, in faithfulness to his trust, he was bound to represent to the ministry, and also the means of preventing it. Experience had shewn, that small bodies of troops in a colony could be of no use, but rather were made to serve the designs of opposition, and to increase discontent and disorder. Troops could be useful in case of actual rebellion only, when civil government ceases, and the military is at liberty to act independently, and free from the restraints they are under so long as the civil constitution continues.

It was necessary to find out the cause of the malady, in order to determine the proper means for the cure of it. The disorders in the colonies took their rise from, and were encouraged by, the disorders in England. To support the cause of opposition there to the powers in being, and to place others in their stead, principles were maintained, incompatible with a state of government, and productive of confusion and anarchy. Acts of the supreme legislative authority, "contrary to the fundamentals of the constitution," were held to be null and void. There being no criterion whereby these
funda-

fundamentals could be ascertained, men assumed a right of determining them in their private judgments, and of forming combinations * to frustrate such measures of government as were alleged to be contrary to them. This right was pronounced to be not only one of the liberties of Englishmen, inseparable from the constitution, but a liberty founded in the nature of man. The contrary doctrine was branded with the terms of passive obedience and non-resistance. The subtle distinctions in support of these principles were above vulgar capacities; but the sound of liberty was enchanting; and the terms passive obedience and non-resistance, which, from the application of them, in the last century, to the power of the king above that of the laws, were deservedly odious †, now became odious when applied

* Such was that of the supporters of the bill of rights; and one of the members of the council declared to the lieutenant-governor, that so long as that assembly continued in England, he would never give his voice against a like assembly in the province.

† The misapplication and abuse of words may be made to serve the cause of party as effectually as arguments supported by sound reason. When passive obedience and non-resistance are due from the subject, and when not, has never been more clearly elucidated than it was by Mr. Addison in one of his political papers, the *Whig Examiner*, No. 5. "Passive obedience and non-resistance are the duties of Turks, and Indians, who have no laws above the will of a grand seignior, or a great mogul. The same powers which those princes enjoy, in their respective governments, belong to the legislative power of our constitution; and that, for the same reasons, because no body of men is subject to laws, or can be controlled by them, who have the authority of making, altering, or repealing, whatever laws they shall think fit. Were our legislature vested in the person of our prince, he might, doubtless, wind and turn our constitution at his pleasure; he might shape our government to his fancy; in a word, he might oppress, persecute, or destroy, and no man say unto him, 'What doest thou?' If, therefore, we would rightly consider our form of government, we should discover the proper measures of our duty and obedience; which can never rise too high to our sovereign, whilst he maintains us in those rights and liberties we were born to. But to say, that we have rights which we ought

1770 plied to the supreme authority. Upon such principles, offences against known and long established laws were every day committed, and by neglect of the executive powers, or by the prejudice and bias of juries, offenders escaped with impunity, which afforded matter of triumph, and excited an open contempt and defiance of the legislative authority.

These principles were soon transplanted to America. One of the "alleged" fundamentals of the English constitution, that no taxes may be levied upon any part of the dominions where the inhabitants are not represented in parliament, or, in other words, where they have no vote in the election of any of the members of the house of commons, distinguished the case of America from the kingdom. In support of this principle, not a part, but the body of the people were engaged; in some of the colonies, the whole powers of government also, and, in all, two branches of the legislative power. The like principle had been extended to other acts of parliament for altering the constitutions, or restraining the powers of government within the colonies; and, by one step after another, it was extended to all cases whatever. The Americans were justified in their advances by a great part of the kingdom, and by many of the members of both houses of parliament.

Absurd as it may be, to maintain a principle in government which must necessarily work its dissolution, yet, when it is maintained, a decision of the supreme judiciary power becomes necessary. An

ought to vindicate and assert; that liberty and property are the birthright of the English nation; and that, if the prince invades them by violent and illegal methods, we must upon no pretence resist, but remain altogether passive, nay, that in such a case we must all lose our lives unjustly, rather than defend them; this, I say, is to confound governments, and to join things together, that are wholly repugnant in their natures; since it is plain, that such a passive subjection, such an unconditional obedience, can be only due to an arbitrary prince, *or to a legislative body.*"

impeachment,

impeachment, therefore, of persons who, upon such 1770 principles, had by their practices, whether in England or America, become offenders against the laws, and a judiciary decision in the house of lords, seemed the first step to be taken. An express acknowledgment of this authority by all persons in publick posts in America, and a penalty upon all persons, whether in England or America, who should deny the authority, would then, perhaps, be thought as reasonable in the case of all the three branches, as in the case of the first branch only.

At this time, there was a high degree of probability that such measures would have restored peace to America, which might have been rendered firm and lasting, by the same indulgence to the subordinate legislative authorities in the respective colonies, in the case of raising monies, and in the general interior affairs of the colonies, as had been the practice before the year 1765. Irresolution on the part of government in England tended to strengthen and encourage the opposition to it in America.

The trials of the persons charged with the crime of murder, in the action on the 5th of March, did not come on until the following October. In the mean time, the statement of the case, as published in England from the narrative prepared and sent by the committee of the town, had been republished in the newspapers of Boston, and, with other publications, tended to prejudice the minds of the people against the prisoners; but the heat which discovered itself in most men, when they first saw, or heard of, so tragical an action, was, notwithstanding, much abated.

The evidence against the four persons tried for firing from the custom-house being only that of the French boy, the jury acquitted them, without going from the bar. It was proved that the boy was at a remote

1770 remote part of the town, the whole time that he swore he was at the custom-house and in King street. The court ordered, that he should be committed and prosecuted for wilful and corrupt perjury ; and, by his own confession, he was convicted.

Captain Preston had been well advised to retain two gentlemen of the law, who were strongly attached to the cause of liberty, and to stick at no reasonable fees for that purpose ; and this measure proved of great service to him. He was also well informed of the characters of the jury, and challenged such as were most likely to be under bias. Three or four witnesses swore that he ordered his men to fire, but their evidence was encountered by that of several other witnesses, who stood near to him, and were conversing with him at a different place from that which the witnesses for the crown swore he was in ; and the judges, in summing up the evidence to the jury, were unanimous in their opinion that he did not order his men to fire ; but, if he did, they were of opinion, that, from the evidence of many other witnesses, the assault, both upon the officer and men while upon duty, was so violent, that the homicide could not amount even to manslaughter, but must be considered as excusable homicide. The jury soon agreed upon a verdict of not guilty, and the prisoner, being discharged, retired to the castle, and remained there until he sailed for England.

The trial of the eight soldiers came on next. It appeared from the evidence, that seven guns only were discharged, and the witnesses could ascertain two only of the prisoners who fired ; though they swore that the whole firing was from the eight. The court was clear in their opinion to the jury, that they were all excusable, firing in defence of their own lives against the violent assaults of the people ;
but

but the jury were made to believe all those who fired 1770 guilty of manslaughter, thinking that they should have forborne firing longer than they did; but finally found the two only who were ascertained, guilty, and acquitted the rest. For if they had found the whole, one who was innocent must have been declared guilty. Application was made to the lieutenant-governor to remit the burning in the hand, but it would have had a tendency to irritate the people, and, being of little consequence to the prisoners, it was thought most advisable not to interpose.

The judges discovered great firmness in so popular a prosecution, and one of them in court expressed his concern that the affair should turn out so much to the dishonour of the inhabitants.

The lieutenant-governor, by these verdicts, was saved from much trouble, which would have been, in all probability, the consequence of the prisoners being found guilty of murder. He must, at all events, have respited execution until the king's pleasure should be known.

The people were prepared for such an incident by a sermon preached in Boston, when the trials were expected to come on, by the *senior minister* of the town, an extract having been published in the newspapers*; but these unexpected verdicts prevented the trouble

* "Some have whispered a suspicion, that a reprieve from death would be granted, should the guilt of blood be fastened upon some who are supposed to have been actors in this horrid wickedness. But it is a high indignity offered to him who had the power of giving a reprieve, so much as to suspect that he would do it, in the case of blood-guiltiness clearly proved upon any in consequence of a fair and impartial trial. Surely he would not counteract the operation of the law, both of God and of man! Surely he would not suffer the town and land to lie under the defilement of blood! Surely he would not make himself a partaker in the guilt of murder, by putting a stop to the shedding of their blood, who have murder-

1770 trouble which some feared, and others hoped, would happen. In letters sent to England upon this occasion, merit was claimed for the people of the province, who had been charged with a revengeful thirst after blood ; but the same letters intimated that the judges were under an undue bias.

The trials were far from satisfactory to the prosecutors ; and, in a short time, a great part of the people were induced to believe the acquittals unjust, and contrary to evidence ; and the killing of the men was declared to be a horrid massacre, with the same freedom as if the jury had found those concerned in it guilty of murder. A few days after the trials, while the court continued to sit, an incendiary paper was posted up, in the night, upon the door of the town house, complaining of the court for cheating the injured people with a shew of justice, and calling upon them to rise and free the world from such domestick tyrants. It was taken down in the morning, and carried to the court, who were much disturbed, and applied to the lieutenant-governor, who laid it before the council, and a proclamation was issued, which there was no room to suppose would have any effect.

These acquittals did not discourage the friends of liberty, but they deprived them of the great advantage which convictions would have given them for promoting the cause.

A discord, about the same time, between the colonies concerned in the non-importation agreement, was a more serious matter than the ill success of these trials. Pennsylvania and New York complained of Massachusetts for not observing the agreement, and there was the fullest evidence of connivance, or neg-

murderously spilt the blood of others ! All such suspicions should be suppressed. They are virtually a scandalous reproach upon him, of whose integrity and regard to publick justice we should entertain a more honourable opinion."

ligence,

ligence, in the committee of merchants; the packages of goods which were imported, and professed to be sent back, having been filled with wood, straw, and rubbish of no value, and the goods left in the province. These were said to be the goods of some who had been zealous for non-importation, while others, who had opposed it, had been compelled to return their goods without opening the packages. The principal merchants of Providence, in Rhode Island colony, were full of goods, imported contrary to the agreement. One colony charged another, which, thereupon, recriminated in the newspapers*. Government in England had taken off all the duties imposed by the last act, except that upon tea; and though the ostensible reason was, that such duties were hurtful to commerce, yet few doubted the real reason to be, a desire to comply with the demands of the colonies, without renouncing a right, which it was not intended further to exercise. Many people, in the southern governments especially, were disposed either to acquiesce without further opposition, or to continue the agreement so far as related to the non-importation of tea only. Massachusetts merchants had a special reason for not agreeing to this last proposal. In Penn-

* The lieutenant-governor of Massachusetts Bay wrote to the lieutenant-governor of New York, and, receiving no answer, to general Gage, signifying his opinion of the importance of encouraging the breach of this illegal combination, which was of such pernicious consequence, being the source of most of the tumults and disturbances in the colonies; and that, however it might be called Machiavelian policy, it was certainly, in such a case, to be justified. When his papers, several years after, were seized, such parts of this letter only were published, as would admit of his intending division and discord of a general nature between the colonies, and it was most wickedly insinuated, that he had special reference to a controversy concerning the boundary line between Massachusetts Bay and New York, which had been the cause of actual hostilities and bloodshed between the inhabitants on the borders; whilst the parts of the letter which would shew that it referred to this illegal confederacy only, were suppressed.

sylvania,

1770 sylvania and New York, tea from Holland was imported in great quantities, with little or no risk of seizure by custom-house officers; and sent by land carriage, and in small packages, into all the western part of Massachusetts Bay, as far as the centre of the province; while the merchants of Boston were under a great degree of restraint, so long as the commissioners of the customs remained there, and had an eye upon the inferior officers under them. The dispute rose to that height before the end of the year 1770, that some of the colonies came to a resolution to dissolve the agreement. It was then to no purpose for the rest to stand out, and a free importation was proclaimed in all.

Besides the exchange of the garrison at the castle, it had been thought proper to make the harbour of Boston the place of rendezvous for the king's ships, instead of Halifax. These were evident marks of the jealousy of government, but they were as evidently the exercise of the constitutional power of the crown, and therefore, though they were displeasing, there was no just exception to be made. It was at the same time plain, beyond contradiction, that government in England was more than ever disposed to lenient and indulgent measures, and that a revenue from the colonies ceased being an object; and that the right of taxing continued to be retained for no other purpose but to prevent a claim, if that had been yielded, to an exemption, upon the like reason, from all other acts of legislation. Four or five months passed away in Massachusetts Bay, more quietly than any other like space of time for seven years preceding. This seems to have been a favourable period for a general amnesty, and a return to the former orderly state of government, if both sides had been inclined to it.

Before the arrival of the lieutenant-governor's letters in England, desiring to be excused from any
further

further share in the administration, the king had been 1771 pleased to direct a commission to be prepared, constituting him governor of the province, in the room of Sir Francis Bernard, and to promote Mr. Oliver to the place of lieutenant-governor ; but lieutenant-governor Hutchinson's letters arriving in a short time after, a stop was put to any further progress. The secretary of state, however, condescended to inform him, that an opportunity was given him for further consideration, and that there would be no appointment of any other person in the mean time.

The advice of so unexpected a mark of favour, with the assurances given him, by his friends, of support as far as should be in their power, together with the abatement of the tumultuous, violent spirit which had prevailed, caused a change of his former determination, and a grateful acknowledgment of the honour done him.

The commissions for governor, lieutenant-governor, and secretary*, arrived the beginning of March, 1771. It is very probable, that, notwithstanding the disputes in which Mr. Hutchinson had been engaged with the council, and house, the major part of the people of the province was not displeased with this appointment, though his principles in government were known in times past, when a member of the house, and afterwards of the council, to be favourable to the prerogative.

The principal leaders of the opposition very much disliked it, partly from that personal malevolence which contenders in political controversy generally, though oftentimes unreasonably, acquire against each other, and partly from an apprehension that his influence would be a check to the progress of their cause ; and some of them had not scrupled to de-

* Thomas Flucker, esq. succeeded Andrew Oliver, esq. as secretary.

1771 clare, that no means should be left unattempted, to lessen this influence. They made their words good.

The addresses, upon his appointment, are some proof of this distinction ; though they are, generally, mere matter of form, and no evidence of the real esteem of the addressers. They were, however, as numerous, and as affectionate, from the several orders of men in the province, as upon former like occasions, the house of representatives, and the congregational* ministers of the town of Boston, only excepted.

The house, upon a motion for an address upon that occasion, after debate, put their negative upon it. In an address in answer to his speech to them, in which, among other things, he had taken notice of the appointment, they assure him, that while he shall religiously regard the constitution of the province, and maintain its "fundamental" laws, he should never want the support of his majesty's faithful commons.

A majority of the ministers of Boston were strongly attached to the leaders of the house of representatives. The governor, however, had never been engaged in controversy with them, but left them to the enjoyment and communication of their own sentiments as they thought fit ; and, as he had in many instances endeavoured to raise the dignity of the clergy, and the respect and esteem of the people for them through the province, any mark of disrespect from them † was less expected. Their address was framed with great art, and the least

* The episcopal, presbyterian, and baptist ministers, were very early and warm in their addresses.

† Many of the clergy of the first character in the country towns took offence at this address from those in Boston, and, at an annual convention of the clergy of the province a few weeks after, a very respectful address was agreed upon, which was presented by a committee from their body.

appearance

appearance of their approbation of his appointment 1771 was industriously avoided; but their just expectations from him, in discharge of the duties of his station, were fully expressed. He took no other notice, than by studying in his answer for as much coldness as they had done in their address.

There was no new occurrence, to give a pretence for new disorders of any kind. It was thought fit, however, to preserve the remembrance of past disorders; and, upon the anniversary of the 5th of March, the bells in the town of Boston were tolled from twelve to one o'clock at noon, and from nine to ten in the evening, and, during the last, figures to represent the murder of the inhabitants were exhibited from a window in a square at the north part of the town. In a town meeting, the usher of one of the publick grammar schools was appointed to deliver an oration at Faneuil hall, to commemorate the "barbarous murder" of their fellow citizens, and to impress upon the minds of the people the necessity of "such noble exertions" in all future times, as the inhabitants of the town then made.

In Salem, there was a religious solemnity; and a prayer and sermon were delivered to a crowded assembly by one of the ministers * of the town, who, in his prayer, implored, that the guilt of blood might be taken from the land, and, in a sermon from a chosen text for the purpose, represented the fatal effects, from the terror of an armed force, over the civil magistrate; and mentioned an instance of its being abundantly verified, at the time of the massacre, when the din and terror of military parade and execution, or something else, had discouraged

* Dr. Whitaker, originally of Connecticut, who had made himself known in England and Scotland by his importunate and successful solicitations for contributions towards the education of Indians, and establishment of a college for that purpose.

the

1771 the king's representative and commander-in-chief from exerting his authority for the removal of the troops.

The publick declarations in the two principal towns of the province, that a fact was "murder and massacre," after repeated decisions of the supreme court of judicature to the contrary, upon the fairest and most deliberate trials which had ever been known, struck a damp upon the spirits of all who were hoping for peace and quietness.

The governor met the assembly soon after his commission was published *, and endeavoured to avoid any further altercation upon the place of their sitting; and upon a desire from the house, that he would remove them to Boston, he signified his inclination to do it, if the obstructions could be removed; but so long as they continued to urge that, by law, the assembly must be held in Boston, he should not dare to ask his majesty's leave to remove it; he was less concerned whether they went to business or not, because, in a short time, he should be obliged by charter to call a new assembly. They made no further difficulty, but after they had sat three weeks, going on with the business of the province, they acquainted him, in a message, that it would have given them no uneasiness if he had put an end to the assembly, rather than to have been called again to that place. They intended to have made the grant of a salary to the governor from the king, a new subject of controversy, but could not be prepared for it. They made grants, both for the arrears of his salary as lieutenant-governor, and also of the same sum which had been annually granted to preceding governors, to both which he declined his assent; and upon their application to him, to inform them, whether any provision had been made

* April 3rd, 1771.

for

for his support as governor of the province, independent of his majesty's commons in it, after remarking, that, "by his majesty's commons," they must intend the house of representatives*, he further observed, that the "king, lords, and commons," our supreme legislature, had judged it expedient to enable his majesty to make a certain and adequate provision for the support of the civil government in the colonies; that he had not received his instructions, and other appendages to his commission; but, when he had received them, he would communicate such part as he should think for his majesty's service.

The dissolution of the assembly following soon after, there was no controversy upon any other subject. Care, however, was taken to leave a hint to the next assembly, for, in their message to the governor, the house declared they were unwilling to admit a belief that he would continue, at another session, the flagrant indignity and grievance of deforcing the assembly from its ancient and "rightful" seat.

He had been instructed not to remove the assembly to Boston; and while they continued the controversy concerning the right of the king to determine the place, he did not think it proper to apply for a relaxation of his instruction. He was sensible, however, of its tendency to fret the minds of the people, and of the use made of this and all other controversies with the governor, to alienate the people from their connexion with the parent

* This would have been an unnecessary remark, if there had been no latent design in changing the technical words, "house of representatives," and substituting, "his majesty's commons." This for some time had been the language in newspapers, and in some former instances in the house, without notice from the governor. It was a new style, and undoubtedly intended, whether it was really so or not, as more proper to express and give importance to that branch of a supreme, independent, legislative power, than the words prescribed by the charter.

1771 state, and to reconcile them to an independency both upon the crown and parliament; and this representation probably produced a further instruction, with a conditional permission to remove the assembly to Boston.

The controversy upon the authority of parliament had now subsisted seven years. When it began, a majority of the members of the council, as well as house, wished to continue under this authority, and thought it advisable to set no special limits to it; but, nevertheless, were unwilling it should be exercised in the imposition of taxes, excises, or any kind of internal duties.

The election, both of representatives and councillors, being annual, the opposition to parliament in each house had been strengthened every year, and the majority on that side had become much greater than it was, at first, on the other side: and, this year, particularly, except in two or three instances, the new members in the house were in opposition. Several gentlemen* remained in the house, who, in common times, would have had great weight on the other side; but now, the great superiority in number against them caused them to despair of success from their exertions, and, in most cases, they were inactive. In such a state of affairs, it was most prudent for the governor to bring nothing before the assembly which would admit of controversy, and which could be avoided.

Mr. John Adams, one of the representatives of Boston, the last year, having changed his residence,

* The principal were Israel Williams, John Worthington, John Murray, Josiah Edson, Timothy Woodbridge, William Williams, Thomas Gilbert, Edward Hartwell. On the other side, the representatives of Boston, together with Joseph Hawley, James Warren, Jerathmeel Bowers, James Prescott, John Whitcomb, Joseph Gerrish, William Heath, Thomas Gardner, Timothy Danielson, Thomas Dennie, and Woodbridge Brown, may be considered as most active and zealous.

and

and become an inhabitant of another town, Mr. Otis, 1771 who, it was said, had recovered his health, was chosen in his stead. When the speaker was chosen and accepted, the house, before they would proceed to the election of councillors, agreed upon a remonstrance to be presented to the governor upon the old subject, the removal of the assembly, but proceeded to the election before it was presented. This gave opportunity for the house, upon a motion from Mr. Otis, to take out of the remonstrance a clause which might be construed into a denial of the right of removing the assembly. They received a gentle answer from the governor, with an assurance of his endeavours that all obstacles to their sitting in Boston might be removed; but he must have his majesty's leave. Mr. Samuel Adams moved the house to come into a resolve to do no business except in the town of Boston, and expressed an opinion of the governor, not very favourable. Mr. Otis opposed the motion, and expressed a very favourable opinion of the governor, and his belief of the same opinion in the people, and added, that he was clear in opinion, that the governor had good right to carry the assembly to Houssatonick*, if he thought fit, and, many other members declaring they had been of that mind the last year, the motion did not obtain. This afforded hope of conciliation in this particular point, but subsequent proceedings in the session destroyed it. Mr. Otis, in his calm moments, had always disavowed any design of a general revolt, or of attaining to a state of independency. He was also evidently dissatisfied with the great influence which Mr. Adams had obtained; and there was a prospect of his being serviceable in preventing the opposition from going to that extreme

* This is the Indian name of a town in the western part of the province, near the borders of New York, which was then claimed as within that province.

1771 which some of them then most evidently intended ; but the unhappy state of his mind soon rendered him of no importance.

The governor refused his consent to two only of the newly elected councillors, the same persons to whose election, the last year, he had not consented.

The eastern part of Massachusetts Bay had, for near a century past, afforded no small proportion of the masts, yards, &c. for the royal navy ; and, not only by acts of parliament, but by the charter to the province, a reserve to the king had been made of all pine trees, with severe penalties for cutting down or destroying them. Great spoil had at all times been, nevertheless, made of such trees, which had been cut into logs of a proper length, and most of them were sawed into boards at the many mills erected in that country ; others were hewn for timber, and served, not for the use of the inhabitants only, but made a principal part of the cargoes of vessels for the West India islands. If any way could have been devised to have distinguished such trees as never could be of any use for the navy, and to have left them free to the inhabitants, it would have been a wise provision. For want of it, the cutting had been commonly without discrimination.

To encourage the commerce of the colonies, bounties had been granted, by several acts of parliament, on boards, plank, and timber exported to great Britain ; and this had greatly increased the exportation, and large sums had been paid by government, for exporting the trees reserved to the crown. Great numbers of people had removed from other parts of the province, and from New Hampshire, and taken possession of the lands in the eastern parts of Massachusetts ; and others had taken like possession, under pretence of some kind of title from grants which had been made of twelve townships,

townships, by the general assembly of Massachusetts; though such grants could not be of any effect without the approbation of the crown, which had not been obtained. 1771

In consequence of instructions from the king, the governor had recommended to a former assembly to take this mischief into consideration, and to provide a remedy. The council had expressed their readiness to do what was necessary on their part; but the house had referred the matter to another session, and, when the session came, took no further notice of it. In this session, he renewed the recommendation, and mentioned the king's displeasure, and the probability there was, that their neglect would cause the interposition of parliament.

This produced an answer tending to encourage the mischief; for they inform the governor that some of these settlements are in consequence of grants made by the assembly, agreeably to the charter; whereas no grant could have any effect until the king had confirmed it; and any other intrusions they allege it to be the duty of the surveyor-general to prevent or remove; and, therefore, they saw no present need of the interposition of this, "or any other legislature." The surveyor-general had authority to prosecute trespassers upon the king's woods, but none to remove settlers upon the territory, nor were any measures ever taken for that purpose.

The governor having declared himself not at liberty to remove the assembly to Boston, without the express leave of the king, and it being now publicly known that a salary of fifteen hundred pounds per annum was established for the governor, by grant of the crown, the house passed a formal protest against the removal of the assembly from Boston, by force of an instruction from the king: and, at the same time, expressed their sense of the power given by

1771 by the charter to the assembly alone to support the governor and other civil officers. They went on, and, after remarks, that an act of parliament had once given the king's proclamations the force of laws, which act was soon repealed,—and that, since that time, another act had been laboured for, to give the force of law to the king's instruction to his governors in the colonies, and that, though it was not effected, yet some governors had appeared to consider such instructions as having the force of laws with regard to themselves and to the people, they proceed to make distinctions between the use and abuse of the prerogative. And, the general assembly being authorized by charter to impose and levy reasonable taxes upon the inhabitants, for the king's service in the necessary defence and support of his government of the province, they, from this clause, determine, that, by the charter, the governor and other civil officers are to be supported by the free gift of the general assembly; and, the safety of the people requiring that every power should have a check, therefore it was ordained by the charter, that the full power of convening, adjourning, proroguing, and dissolving, should be in a governor residing in the province, and supported by the free grants of the people; and the king, they say, covenanted that the governor shall exercise this power, "as he shall think fit," and not another: therefore, an endeavour, meaning the instruction from the king, to restrain the governor in the exercise of this power, is clearly an attempt to infringe and violate the charter. And, upon the whole, they conclude with protesting against the exercise of the prerogative in this manner, as an intolerable grievance*.

It was necessary for the governor to make some

* Appendix T.

answer

answer* to so strange an instrument, which he en- 1771
deavoured to do in such manner as to give as little
occasion as possible for further altercation. He
took no notice of their strange inference from the
grant of *full* power to the governor, that the king
intended to exclude himself from instructing him in
the use of it, and had ordained that the governor
should depend upon the people for his support, that
they might have a check, by withholding the support
when he did not make that use of his *full* power
which he ought to do; lest it should give pretence
for a reply upon the subject of a salary from the king,
which they had obliquely touched in the protest.

The most unfair, delusive part was their equivocal
use of the word "law," and their insinuating
that the governor considered his instruction as au-
thorizing him to act contrary to laws, which, without
such instruction, would be in force. For, from the
nature of legislative power, a later law contrary to a
former is a virtual repeal of it. This was more
inexcusable, because he had repeatedly declared
that he would never plead an instruction to justify
a departure from the laws.

The tendency of this instrument to lengthen out
the controversy another year, gave him the greatest
concern. Immediately after he had assured them
of his endeavours to remove every obstacle in the
way to his meeting the assembly in Boston, they
threw in a fresh one, more difficult to remove than
all the former.

This protest was strongly opposed in the house;
and, after it was carried, some of the principal
members despaired of success in opposing any other
measure, and remained silent the rest of the
session.

It was considered by government in England as

* Appendix U.

a greater

1771 a greater insult than had been offered at any time ; and this remark was made, that "the same men who denied the right of the king to instruct his governor, would soon deny the right of appointing him."

It was not in the governor's power to avoid bringing before the assembly another subject for controversy, just at the close of the session. His instructions from the king were not sent with his commission, and, after some months delay, were received when all the bills which had been passed by the two houses lay before him for consideration, and, among the rest, a bill for levying taxes. The assessors, by force of a clause in the tax acts, had assessed the salaries of the commissioners of the customs ; and, though the sum was not worth regarding, yet, as they conceived it unwarrantable, they had made complaint, and an instruction was given to the governor, not to consent to any bill with a clause which would authorize taxing the salaries of the commissioners, or any other officers paid by the king. This was altogether unexpected by the governor, but there was no room to doubt. If he had not observed this instruction, besides the hazard of the king's displeasure, it would have been urged as a precedent by the people in all other cases. He therefore declined his assent, and as there was no other pretence, the bill being in the usual form, he informed the house of the reason. This produced from them a sudden, and very angry message, declaring that they know of no commissioners of his majesty's customs, nor of any revenue his majesty has a right to establish in North America ; that a tribute has been extorted from those who, if they have property, have a right to the absolute disposal of it ; that the general assembly has the sole right of raising and levying taxes, and must, therefore, have an uncontrollable right to order and direct upon whom, and in

in what way and manner, such taxes shall be raised 1771 and levied, and that the governor's withholding his assent to this bill, merely by force of instructions, was effectually vacating the charter, and giving instructions the force of laws within the province.

This was a very strong denial of the authority of the parliament, not in imposing taxes only, but in the regulation of trade, for which purpose the power of the commissioners of the customs in England had, by an act of parliament, been given to such commissioners as his majesty should appoint in America. And if their claim to an exemption from all taxes, except by the assembly, should be supported, yet the reserve made by the charter of the royal approbation of all their acts whatever, was a control upon the assembly; and it was really a favour to restrain the governor from consenting to an act which, upon its being laid before the king, would be disapproved, at a time when its operation had commenced, but was not completed.

As the session was just at an end, this measure had no further effect in the assembly at that time; but it was a subject for newspaper abuse of the governor, as well as of the commissioners, and was of disservice to government.

The governor found among his general instructions, which are intended as a standing rule, one which restrained him from consenting to any grant for the payment of salaries to separate agents of council, or house, and another which censured the council for assembling, except in their legislative capacity, without the governor, and which required him to admonish them to desist, and, if any should refuse, to withhold his consent to their election as councillors. There appeared a dislike of these instructions. The council, however, no longer persisted in a claim to what was so unconstitutional. The salaries of the agents were a subject for the assembly

1771] assembly, but a long recess caused a respite from publick controversy for several months.

A turn in affairs in England, about this time, contributed to quiet. The news of a spirit, said to be raised by the imprisonment of the lord mayor and one of the aldermen of London, against administration, and the assurances given that there would be a change of ministry favourable to America, had given fresh spirits to the opposition there, in the beginning of the year ; but the dissensions between the patriots in England, and the advices that ministry stood firm, had, before the close of the year, struck some degree of damp.

About the same time there was a breach among the patriots in Massachusetts Bay. Mr. Hancock, whose fortune had given him great weight, and who, by a generous, beneficent disposition, had gained much esteem with the body of the people, had been firmly attached to Mr. Adams, and had strengthened his interest, in Boston especially. All friendship between them was suddenly at an end, and Mr. Hancock expressed his dissatisfaction with the party, and with their extending their designs further than appeared to him warrantable.

The governor very willingly signified to him, that the repeated denials of consent to his election into publick offices had not proceeded from any degree of ill-will towards him, or from any exception to his general character, but altogether from the part which he had taken in opposition to that authority which the governor, from his office, and from fidelity to the trust reposed in him by the king, was bound to support ; and that, upon a change of sentiments in Mr. Hancock, every thing past would be entirely forgotten, and it would be a pleasure to the governor to consent to his election to the council, where he could more easily take such share in publick affairs as he thought fit, than he could do in
the

the house, business in the latter requiring a more 1771 close and constant attention. This he declared to be neither his object, nor inclination; but he intended to quit all active concern in publick affairs, and to attend to his private business, which, by means of his attention to the publick, had been too much neglected. The disunion, however, which lasted several months, checked the progress of measures in opposition to government.

Mr. Otis, about the same time, was taken off by a very different cause. Before the close of the session of the assembly, he had discovered strong marks of a returning insanity, and, not long after, became outrageous; and at length, upon application from his relations or friends, a guardian was appointed, who caused him to be removed from the town, and confined at Nantasket.

An effort was made, in this calm interval, to raise a commotion from a very trivial and innocent cause, and yet not without some effect.

It had been a long, uninterrupted practice for the governor, as soon as harvest was over, to issue every year a proclamation for a publick thanksgiving, and, among the enumerated publick mercies, the continuance of civil and religious liberties had constantly, perhaps without exception, been mentioned. The proclamation, by advice of council, was issued this year in the usual form. After the people of the province had been prepared for such an attempt by the publick newspapers, a number of persons, in the character of a committee, attended upon the ministers of Boston, to desire that they would not read the proclamation to their congregations. One had read it; the rest, one * excepted, complied with the desire of the committee. There was not sufficient time to prepare the ministers of the country towns. Some, however, declined reading it; and

* Dr. Pemberton.

some

1771 some declared in the pulpit, that if the continuance of *all* our liberties was intended, they could not join in giving thanks. It having been the constant practice to read such proclamations in all the churches through the province, a more artful method of exciting the general attention of the people, which would otherwise, for want of subject, have ceased, could not have been projected.

The 5th of March, the second anniversary of what continued to be called the massacre, afforded a more effectual means of preserving this attention. Mr. Adams had been pressed to pronounce the oration upon this occasion, but declined it; and Dr. Warren, who afterwards lost his life at Bunker's Hill, and whose popularity was increasing, undertook it. Though he gained no great applause for his oratorical abilities, yet the fervour, which is the most essential part of such compositions, could not fail of its effect upon the minds of the great concourse of people present.

The winter passed without a session of the assembly; but a short session was necessary in the spring. The speaker of the house being confined by bodily indisposition, Mr. Hancock was chosen *pro tempore*, and the governor gave his approbation. Upon the appearance of members sufficient to make a quorum, Mr. Hancock had moved, that a message be sent to the governor to desire, that, in consideration of the inconveniences attending their sitting at Cambridge, he would remove the assembly to Boston. This was all the governor desired. He was willing to consider it as giving up the other point of right. This motion was opposed by Mr. Adams, and failed. The like motion was made in council, and was opposed by Mr. Bowdoin, and failed also. The reason alleged against both, was the removal of the assembly by virtue of an instruction. The governor had informed them, that he was
not

not at liberty to remove the assembly to Boston 1771 again, while they continued to deny the authority of the king to instruct his governor where to hold the assembly. If they should now desire the governor to remove it, merely because it was more convenient to sit in Boston, it would be a tacit receding from the other point, and a departure from their charter, which authorized the governor to act as he, *by himself*, and not as the king should judge necessary. It was better that the assembly should always sit at Cambridge, than give up so important a point. This motion, however, prevented any further difficulty for the session, the house proceeding to business, which the governor left them to do as they thought fit, without recommending any thing to which it was possible to find exception. A message from the house, conceived in more calm and conciliating words than any which he had before received, but still insisting upon former points, he deferred answering until the close of the session, and then he endeavoured, with equal moderation, to shew them the inutility of their new system, as well as the insufficiency of their reasons to support it.

It is certain, that there had been no period when the province was more free from real evils, or when it felt less of the ordinary burdens which must at all times be felt, more or less, by the people of every government; and, to keep up a spirit of discontent, recourse was had, either to evils merely imaginary, or to such as were at a distance, and feared rather than felt. An expedient had been found, even in the case of taxing the salaries of the king's officers, which had raised a flame at the close of the last session. From the surplusses of former funds, and from debts due to the government for lands which had been sold, there appeared a fund sufficient to raise money, not only for the service of the present year, but of some years to come, so as to render any tax unnecessary

1771 necessary. The whole debt of the province, at the expiration of the last war, had been since paid by taxes of less than twenty thousand pounds sterling in a year, except about forty thousand pounds, which was charged, part upon the present, and part upon the next, and, if raised by a poll or capitation tax, would not exceed six shillings a head in each year, equally divided among the male inhabitants subject to taxes. No excise of any sort was then paid, and only an inconsiderable impost, which little more than paid the salary of an officer who collected a small sum charged upon vessels to maintain a lighthouse, and a small duty upon foreign vessels, to keep up the province stock of gunpowder. Commerce never was in a more flourishing state. The Massachusetts province was, in this respect, the envy of all the other colonies; and while the other colonies, by encouraging a delusive paper medium of trade, had banished silver and gold, the Massachusetts had drawn them, not only from several of the other colonies on the continent, but from Jamaica, and more or less, every year, from Spain and Portugal, and had obtained the name of the silver money colony. The duties imposed by acts of parliament had been reduced, and, except the duty of seven pounds per tun on wines, were scarcely worth the hazard and charge which would attend illicit importation. The only articles which brought any sums to make them an object, were molasses and tea. The duty upon foreign sugar was intended to discourage the importation, which was deemed but reasonable in order to encourage the English islands. The duty on molasses was reduced to one penny per gallon, and, by collusion with the landwaiters and gaugers, was oftentimes much more reduced. Besides, even this was, eventually, rather a duty upon the French colonies than the English, who were the only purchasers in the French islands.

More

More tea, indeed, was imported legally into Massa- 1771
chusetts Bay, than into all the other colonies, and
even so small a duty as three-pence the pound
amounted to a larger sum than the salaries of all the
officers intended to be paid out of it; but by taking
off twelve-pence, which used to be paid in England,
and substituting three-pence only, payable in the
colonies, it was cheaper than it had ever been sold
by the illicit traders; and the poor people in
America drank the same tea in quality, at three
shillings the pound, which the people in England
drank at six shillings. In no independent state in
the world could the people have been more happy,
than they were in the government of Massachusetts
Bay. They felt nothing which could be made the
means of disturbing them. Fears of something
future must be raised for that purpose. America
was part of a government, another part whereof was
three thousand miles distant.—The supreme autho-
rity of the whole was placed within, and constituted
by, this other part.—Interest, a governing principle
with all mankind, would certainly lead this supreme
authority to distinguish America from the other
parts, by imposing an unequal share of the burdens,
and debarring from an equal share of the benefits
of government.—The people of England had it in
their power to change their rulers, whenever they
abused the trust reposed in them.—The Americans
had no remedy.—The one were subjects, the other
were slaves.—The Americans imagined themselves
owners of estates, which were in reality the estates
of the people of England; for how can a man be said
to have a property in any thing which is at the
disposal of another?—It had been attempted to take
a part of the income or profits of these estates,
under the pretence of a reasonable proportion to the
charges of government; but this was a mere pre-
tence.—There was a design, at bottom, to subject
the whole to such rents as should be thought proper.
—Troops

1771—Troops had been sent to suppress tumults, and what, it was pretended, were unlawful assemblies; but the real design was, to take possession of the province, and, with such addition as should be found necessary, to secure obedience to an absolute, unlimited power, and give success to the plans of despotism.

To the impressions made from fear of these evils, must be attributed the disorder and confusion which had prevailed for seven years together. Other means might have been found, perhaps, to heat the dregs of the people, who were among the immediate actors; but the more considerate part of the people could not otherwise have been brought to sit still and suffer such disorders, much less to have taken an active part, or to have discovered an approbation of them.

Endeavours were used, on the other hand, to persuade the people that they were influenced by groundless fears, artfully raised by men, whose views were their own advancement by the ruin of the present easy, happy model of government, and the establishment of another form, but under their own real, if not nominal authority, in the place of it; that the first settlers of the colonies, who came from Europe to America, and took possession of a territory which was then part of the English dominions, were all under engagements, express or implied, to continue subjects of the supreme authority of the whole dominions; that, without the protection of this authority, the colonies could never have arrived to the state they were in; that they would have been extirpated by the French, when in their infancy, or have been held to acknowledge themselves subjects of France, if the title of England to this territory, which was also claimed by France, had not been their security; that, although the Massachusetts, in particular, had, in several wars, and at great expense of blood as well as treasure, defended

defended their inland frontiers from French, as well 1772
as Indian enemies, yet it was the superior naval
power of Britain to which they were indebted for
the protection of their frontiers by sea; that they
need not go back twenty years to recollect their
own fears of extirpation from the French, which
caused them to repair to the claim they had, from
their allegiance, to the protection of this supreme
authority; which immediately engaged in their be-
half, and had expended a far greater sum in their
rescue than the whole property, real and personal,
in all the colonies, would amount to. It deserved,
therefore, very serious consideration, whether, in a
moral view, a separation of the colonies, which
must still further enfeeble and distress the other
parts of the empire, already enfeebled by exertions
to save the colonies, could be justified.

It was not easy to devise a system of subordinate
government less controlled by the supreme, than
the governments in the colonies. Every colony
had been left to frame their own laws, and adapt
them to the genius of the people, and the local cir-
cumstances of the colony. Massachusetts, in par-
ticular, was governed by laws varying greatly from,
though not repugnant to, the laws of England. Not
only their penal laws, their forms of administering
justice, the descent of estates, varied from the
English constitution, and were settled to their own
minds; but they had been allowed to establish a
mode of religious worship, and a form of church
government and discipline, which, at most, might be
said to be only tolerated in England.

In very few instances had the interior govern-
ment of any of the colonies been regulated, or con-
trolled, by acts of parliament. By far the greatest
part in force were for the regulation of commerce,
which the colonies had at all times acknowledged
to be reasonable. Admit that an exertion of power

1772 had been attempted, in raising money for a revenue from America, a power which had been indulged to the assemblies of the colonies from the beginning, and which they might well be alarmed with attempts to take from them: was there no reason, that, after such immense sums raised by parliament, within the kingdom, for the preservation of the colonies, they should raise, within themselves, some part of what was necessary for their future security? Was it not necessary to keep up forces for the defence of the southern colonies, then harassed by the Indians, still directed by French councils, and for preventing the revolt of the Canadians, who, for the security of the colonies on the continent, had been preferred, in the late treaty, to the West India islands, which, in all other respects, would have been a more valuable acquisition to the British dominions?

Was it not proposed and recommended to the several assemblies, to raise such reasonable proportion in their own way and manner; and was not this proposal rejected, by Massachusetts particularly, in terms much too contemptuous?

But, admitting a resistance to the authority of parliament, in this instance, to be excusable, have we not obtained from it all that can be wished for? Is not the stamp act repealed? Have not other duties been wholly taken off, or reduced to the rates proposed, or acquiesced in, by the colonies themselves? Have not the strongest assurances been given, that no further duties, or taxes, are intended? Are those that remain such burdens as to make a continuance of disorder advisable? Does there not appear a general disposition in government in England, in a short time to remove even those burdens? We certainly have it in our power to return to, and remain in, the enjoyment of every privilege to which, by charter, we can lay a just claim.

Besides, should it be admitted that measures for
attaining

attaining to independency are warrantable, what 1772 probability is there of attaining to it? As soon as we shall appear in open rebellion, is not the power of Britain sufficient to crush us at one stroke? Can we hope that any part of the kingdom will vindicate a rebellion, or obstruct the measures of government for suppressing it; or may we flatter ourselves, that any foreign powers in Europe will afford us assistance, and, by assisting us in our revolt, justify the revolt of their own colonies? Much less ought we to presume upon such unexampled, incredible contingencies, as favoured us in our rash, though successful, expedition to Louisburg.

But should we finally succeed, how many thousands must have lost their lives in the attempt, and how much greater number must have been rendered miserable? In a state of civil war, all distinctions between good and evil, between right and wrong, are soon lost; the humane, benevolent affections are effaced, and every man's concern for his own security makes his feelings for the miseries of his former near connexions, at least, to abate. And, after all, a new independent state may be added to the empires of the world, with, perhaps, the name of a free state; a few individuals may attain to greater degrees of dignity and power; but the inhabitants, in general, will never enjoy so great a share of natural liberty as they would have done if they had remained a dependent colony. Thus, for an imaginary good, and even that, improbable to be attained, we are parting with real, substantial happiness.

These were some of the principal reasons urged to restore a contented, pacifick disposition in the province, and perhaps they had a temporary effect. It was apparent that, even in Boston, a considerable proportion of the people were still in favour of government. No opposition had been made for several

1772 ral years past to the election of members in that town; but in May, 1772, an attempt was made against Mr. S. Adams, and it appeared, upon trial, that near one-third* of the votes were against him. Although this attempt shewed that a strong party was still left which disapproved the measures of opposition, it proved a disservice to government. It caused an alarm, and a more vigorous exertion; and no endeavours were spared to heal all breaches in the opposition, and to guard against a renewal of them. The friends both of Mr. Hancock and Mr. Adams never ceased, until they had brought about a reconciliation.

At the election of councillors this year, one only was negatived; and the governor gave his consent to Mr. Hancock, among others newly elected; but he declined accepting, and remained in the house.

The governor had flattered himself that he should receive such a message from the house, as would leave no difficulty in the way of his removing the assembly to Boston; but apprehending, upon reading their message, that they had brought an expression into it, with intention to construe it in such manner as would imply a denial of the right of the crown to direct where the assembly should be convened, he suddenly, and imprudently, desired an explanation of it. This occasioned a short answer from the house, that their message needed no explanation; and a reply from the governor, that, so long as their intention appeared to him uncertain, he must be justified in refusing to act in consequence of it.

This sudden step gave the governor much uneasiness. Both council and house charged him with too critical a distinction, and several of his friends were hurt by it, and assured him that they did not

* 218 in 723.

believe any such design as he suspected. After the 1772 matter had rested near ten days, to prevent a dissatisfaction among the people of the province, he laid his instructions and the message of the house before the council, and required their opinion and advice, upon the oath they had taken as councillors, whether, upon that message, he might remove the assembly to Boston, consistently with his instructions? They were unanimously of opinion that he might; and he caused the assembly to be adjourned to Boston accordingly.

Thus one of the alleged grievances was removed, which had subsisted between two and three years; but not with so good grace as if the desire of the house had been immediately complied with. There was room, however, to hope for a session without controversy.

It was known before the last session, that the salary of the governor was paid by the king. It was thought proper, however, by the house, to pass it over without serious notice; but at the beginning of this session, a committee was appointed to prepare a message to the governor, praying him to inform the house, whether provision had been made for his support, otherwise than by the acts and grants of the general assembly; and upon receiving his answer, that provision had been made by the king, they thought fit to send both message and answer up to the council, with their opinion, that the answer very nearly affected the constitution of the province, and, therefore, the house had directed both message and answer to be laid before the council, that they might act thereon as they should think fit. At the same time they appointed a committee of their own members, to take it under consideration, and make report. The council, though several motions were made by one or more of the members, for a vote upon the subject, declined taking

1772 taking any notice. Towards the close of the session, a report * was made by the committee of the house, which met with great opposition from near a third part of the members, in several questions † upon the most material parts of it; but, it having been resolved to print the names of the voters on each side, it was finally carried by 85 against 19. This report was supposed to be drawn by Mr. Hawley, one of the committee, and was well adapted to the purpose of inducing the people to believe, that their rights by charter were invaded, and that the powers, which, in all free governments, ought always to remain in the people, were, by this act of the king, taken from them. A judgment may be made whether there was any real ground of complaint, from a view of the controversy as stated on both sides.

It was laid down by the governor, that the Massachusetts colony, after a judgment against its charter, had made application to parliament for the restoration of it; but, failing of success, petitioned the king for a new charter, who, of his mere grace and favour, re-established a body corporate, and granted all the powers of government in their present charter,—that the people, by such grant, acquired good right and title to the powers and privileges conferred by this charter, until, by judicial process, they should be declared forfeit, or, by an act of the supreme legislative power, should be taken away, or altered,—that, in this charter, the king had reserved to the crown its right of appointing a governor, had granted to the people the privilege of electing a house of representatives, and to the general assembly the privilege of electing a council,—that the governor, the council, and the

* Appendix V.

† Upon the decision of one of these questions, several gentlemen, Israel Williams, John Worthington, John Murray, and others, left the house and went home, despairing of success.

house

house, were constituted the legislative power, or the 1772 three branches of the assembly, which must all concur in every act of legislation, and the refusal of any one branch thus to concur was properly a check or restraint upon the others, notwithstanding which, each branch did, and ought to remain free and independent,—that, among other powers of legislation, “that” of imposing taxes for the defence and support of the government was granted to the general assembly, and that the support of the governor must be included in that of the government, unless the king should think fit to make provision in any other way, in which case the obligation, that otherwise would lie upon the assembly, ceased,—that the withholding, or diminishing of the support of the governor, in order to compel him to any act of government, subverted the constitution, by annihilating one essential branch,—and that, in order to preserve the constitution entire, the king had thought fit, from the provision made by an act of parliament, to ascertain and establish a salary adequate to the support of the governor.

The house, on the other hand, in their report, had considered the charter as a “contract,” made upon a treaty between two parties, king William and queen Mary on the one part, and the inhabitants of Massachusetts Bay on the other;—that, by this charter it is established and ordained that there shall be a governor appointed by the king; which power of appointing a governor, they incidentally observe, devolved upon the crown “by force of this charter,” which they had before called a “contract;”—that it is also granted, that there shall be a general assembly, with full power to impose taxes for the support of the government, of which support, that of the governor is a very material part;—that, by this grant, the assembly acquired an *exclusive* right of judging what is an adequate support, and
how

1772 how it shall be raised, as appears not only from the charter, but from the usage of eighty years;—that such a right is essential to the freedom of the constitution, to which freedom, power given by charter to the crown, if there be no check, must be so far destructive;—that it is evidently designed by the charter, that this power of providing for the support of the governor should be in the assembly, “to serve as a check” to restrain him from exercising even his constitutional powers, in such manner as shall be injurious and oppressive to the people.

A governor, therefore, who receives his support from the crown, is not dependent upon the people, as the charter prescribes, and consequently is not, in that respect, such a governor as the people consented to, at the granting of the charter.

These are the material parts of the report, to shew the system which they first exhibited. They passed resolves correspondent, and they assured the governor, that they were ready to make the usual annual grant, and other ordinary provision for his support, provided he would accept the same in *full* consideration of the ordinary services of government, done, or to be done by him; and if he could not, without his majesty's special permission, accept of such grant, they pray him to make application for leave to receive his whole support from the province, according to ancient and invariable usage.

The resolve, that the governor was not such a governor as the people agreed to, was of a dangerous tendency. Here was a declared breach of the original contract; and it was easy to add, that, though the chair is not vacant, the powers of government, which are conditional, are at an end. The answer*

* Appendix W,

given

given to the report, by the governor, at the close of 1772 the session, was made publick with it, and, probably, prevented much of the intended effect.

This attempt served, however, to prepare the people for a more resolute stand against the salaries of the judges, of which, for some time, there had been a rumour; and, a month or two after the assembly rose, intelligence was brought to Boston, that grants were made by the king, and warrants ordered on the commissioners of the customs for payment*.

As the assembly was not then sitting, a meeting of the inhabitants of Boston was judged necessary. A petition was immediately presented to the select men, praying that a town meeting might be forthwith summoned. Mr. Hancock, who appeared still to disapprove of precipitate measures, with three or four more of the select men, gave their voices against the prayer of the petition, and it was rejected. This increased the zeal of the inhabitants. Matters, they said, are now brought to a crisis, and, from this time, posterity must date their freedom, or their slavery. Divers other petitions were set on

* In August 1772, a change was made in the office of secretary of state for the American department. Dr. Franklin, with other persons, had projected the settlement of a colony in the interior parts of the continent of America, and a petition had been preferred for a grant of a vast tract of territory upon and near the river Ohio. Many persons of influence were among the proposed grantees. Lord Hillsborough opposed the grant. The petition, notwithstanding, was favourably received, and a grant in form was resolved upon. His lordship considered the measure as tending to accelerate the revolt of the colonies, and as counteracting his general plan for preventing such revolt, and thereupon resigned the seals. The king was pleased to appoint lord Dartmouth to be secretary of state for America in his stead, and at the same time to confer the dignity of viscount and earl of Great Britain upon lord Hillsborough. In a few months after, the danger which his lordship had been aware of, became more apparent, and a stop was put to the progress of this grant.

foot,

1772 foot, which the select men could no longer resist, and a town meeting was summoned*. An address to the governor was soon agreed upon, representing both town and country in an alarm, from a report that stipends were affixed by the crown to the offices of the judges of the superior court, which had a tendency rapidly to complete that system of slavery which had originated in the house of commons; and praying him to inform them whether he had received any advice thereof.

The inhabitants of towns derived their right of assembling, as inhabitants, from a law of the province. By this law, such meetings are to be held "when there shall be occasion for them, for any business of publick concernment to the town, there to be done." Attempts had often been made to prevent any other business from being transacted there, than what the law allowed; but the inhabitants had resisted such attempts, and, by long perseverance, had discouraged all who opposed them. The governor, therefore, in his answer, signified to them that it was by no means proper for him to lay before any town his correspondence as governor of the province, or to inform them what advices he had received relative to the publick affairs of the government; and obliquely touched upon the unwarrantableness of their meeting, by adding, that, "upon any business of publick concernment to the town," he should always be ready to gratify them, as far as may consist with fidelity to his trust.

This answer produced a second address, with much higher expressions of the fatal evils from the establishment of salaries for the judges, the distant thoughts whereof filled their minds with dread and horror: and therefore praying that he would not further prorogue the assembly, but suffer it to meet

* October 28th, 1772.

on the second of December, the day to which it 1772 then stood prorogued.

The governor informed them, that, before he received their address, he had determined further to prorogue the assembly, because he thought it for his majesty's service, and the interest of the province; that they had given him no sufficient reasons for altering his opinion; that he should not be able to justify himself to the king in complying with their desire, because it would be giving to them the powers which the charter had given to him. Besides, it would encourage other towns to determine upon the proper time for the assembly to meet, or to transact any other matters, which the law has not made the business of a town meeting.

The intimation, that every other town might with as much propriety assemble for this purpose as Boston, it being equally against law in all, gave offence. The answer was read several times, and at length the question was put, whether it was satisfactory, and passed in the negative, *nem. con.*

They thereupon resolved, that, in their opinion, the inhabitants* of the town ever had, and ought to have, a right to petition the king, or his representative, for the redress of such grievances as they feel, or for preventing such as they have reason to apprehend, and to communicate their sentiments to other towns.

The design of this meeting now appeared to be much more extensive than merely preventing the salaries of the judges from the crown. While the governor and other servants of the crown were

* This was waiving the point. The governor had taken no exception to any persons petitioning him, nor to the communication of sentiments from inhabitants of one town to inhabitants of another. His exception had been to the assumption of powers by towns in their corporate capacity, beyond the limits defined by the law which gave them corporate powers.

endeavouring

1772 endeavouring to quiet the minds of the people, by removing whatever they had been brought to consider as a grievance, a plan was projecting in England, for raising greater disturbances in the colonies in general, to begin in Massachusetts Bay, than had ever been known before. The claims of the colonies were prepared in England, in a more full manner than ever before, with a manifest design and tendency to revive a flame, which was near expiring. These, it seems to have been intended, should be first publicly avowed in Massachusetts Bay, and that the example should be followed by all the other colonies. They arrived not long before this time in Boston, as did also other inflammatory matter *, reserved for a more convenient opportunity.

At this town meeting, though the professed occasion on which it was called, was the alarm caused by news of the judges' salaries, a committee was appointed of twenty-one persons, to state the rights of the colonists, and those of the Massachusetts colony in particular, as men, as christians, and as subjects, and to communicate and publish the same to the several towns in the province, and to the world, as the sense of the town, with the infringements thereof, that have been, or, from time to time, "may be" made.

In political discussions, talents for compositions which will admit of a double construction, are exceedingly useful; and, from the beginning of this controversy with the colonies, such talents had been employed with great success, both in England and in the colonies. Much of this duplicity appeared in the statement of rights reported by this committee, which, although at its first appearance it was considered as their own work, yet they had little more to do than to make the necessary alterations in the

* The governor and lieutenant-governor's private letters.
arrangement

arrangement of materials prepared for them by their 1772 great director in England, whose counsels they obeyed, and in whose wisdom and dexterity they had an implicit faith.

Such principles in government were avowed as would be sufficient to justify the colonies in revolting, and forming an independent state; and such instances were given of the infringement* of their

* One of these infringements is said to be a violent one,—a late act of parliament, entitled, “An act for the better preserving his majesty’s dockyards, magazines, ships, ammunition, and stores.” Through inattention to dates, this act was supposed to have been occasioned by an assault upon the officers and men of his majesty’s armed schooner *Gaspee*, and the burning of the schooner in the harbour of Rhode Island. This act did not arrive in America until some months after the fact, but it passed in parliament before the fact was committed; and the setting fire to the storehouses in the king’s yard at Portsmouth seems to have given rise to it. This fact at Rhode Island, and the consequences of it, had a great tendency to strengthen the attempts making in Boston to raise a fresh spirit in the colonies. A vessel in the king’s commission and service had been attacked by a great number of armed men, the commander grievously, and, it was supposed, mortally wounded, and the vessel, and all that was combustible, burnt. Many of the persons concerned were known, and little, if any attempt was made, by authority in the colony, to bring any of the offenders to justice. It was therefore thought fit, in England, that a special commission should issue from the crown, to authorize and direct an inquiry into the affair, and to grant the necessary powers for that purpose. The governor of the colony, though elected annually by the people, was named at the head of the commission. An authority to grant such commission is indisputably in the crown, though the inquiry be made in the colony, and is a necessary consequence of the authority to order the royal navy, and every part of it, to such colony; which cannot be presumed to be taken away, or lessened, by force of any charter whatever. Such a commission, however, became an additional article of grievance.

The commissioners met, and sat some time to no purpose, and, after an adjournment of some months, met a second time, but with no better success. Such persons as had been groundlessly suspected, they found no difficulty in convening; but the persons really concerned in the fact, they either were never able to apprehend, or, if any such were apprehended, no witnesses would appear to give testimony against them.

rights

1772 rights by the exercise of parliamentary authority, as, upon like reasons, would justify an exception to the authority in all cases whatever; nevertheless, there was colour for alleging that it was not "expressly" denied in "every" case. The whole frame of it, however, was calculated to strike the colonists with a sense of their just claim to independence, and to stimulate them to assert it.

The first of these infringements are taxes by parliament; which, as has been observed, there was a fair prospect of having brought back, even below the state they were in before the troubles began.

The commissioners of the customs are said to be "new" officers, not named in the charter, which gives the general assembly the "sole" right of appointing all civil officers, but such as are expressly excepted, and these are not; their powers are "unconstitutional," and to the last degree dangerous to our property and our lives; an act of the province, establishing the fees of custom-house officers, had by mere dint of power been made, or attempted to be made, null and void, by force of an act of parliament, in violation of the charter, and other and exorbitant fees established for the same officers.

The commissioners of the customs were in no other sense "new," than as they were appointed to reside in the province with the same powers which commissioners before had, who resided in England. The powers, being the same, could be no more "unconstitutional," or "dangerous to lives and properties," than they had been for fourscore years preceding. If the power given to the assembly to appoint "all" civil officers excluded parliament from constituting any, the like power to the assembly, to make "all" manner of laws, statutes, and ordinances, must exclude parliament from passing any law, statute, or ordinance whatever; which doctrine, and which only, will also support the exception

tion to parliament's superseding the province law 1772 which settles the fees of custom-house officers.

The other infringements were the introduction of the king's ships and forces into the province, without consent of the assembly; the payment of the salaries of the governor and the judges by authority of an act of parliament; the powers granted to the courts of vice-admiralty; the restraint upon slitting-mills, and transporting hats and wool, which had been all restrained a great number of years; the act for preserving his majesty's dockyards; and an act talked of, for establishing an American episcopate, which gave occasion to a declaration of the town, that, in their opinion, no power on earth can justly give either temporal or spiritual jurisdiction within the province, except the great and general court.

These were all void of any "special" reason to support them, and derived their whole force from this "general" principle, that parliament had no authority in any case whatever. The "British" parliament, as the first article of infringement, is charged with assuming the powers of legislation for the colonists, in all cases whatever, and from this mode of expression many were led to suppose that this power would be admitted in some cases; but the ground of the exception which follows, "without obtaining the consent of the inhabitants, which is ever essentially necessary to the rightful establishment of such a legislative," is equally forcible in every case, as it is in any one case whatever*.

The unanimous vote of the inhabitants of the town

* These are the heads of all the grievances mentioned as arising from acts of parliament. There are two others,—the governor's observing the instructions from the king, when his own judgment ought, according to charter, to be his rule; and the decree of the king in council determining the bounds of the colony. These are of another nature; the last never before deemed a grievance, and the first, not until the dispute with the governor upon his removing the assembly from Boston.

1772 of Boston, approving of this report, and published to the world, was a part only of the plan. It was to be sent to every town and district in the province, and to every member of the house of representatives. A letter also was prepared, to accompany it to the towns and districts, signifying that great pains had been taken to persuade the "British" administration to think, that the good people of the province, in general, were quiet and undisturbed at the late measures. It was, therefore, more necessary that the sense of the people should be explicitly declared. A free communication of sentiments of the common danger was earnestly solicited; and, if they should concur in opinion that the rights are properly stated, and that the several acts of parliament and measures of administration are subversive of those rights, they will, doubtless, think it of the utmost importance to stand firm as one man to recover and support them. Should the general voice be otherwise, they must be resigned to their wretched fate: but they trust this cannot be the case.

The voice of the several towns and districts * being obtained, it was to be laid before the assembly; where it could not be expected that it should admit of any debate among the members, when it had been approved by their constituents.

The committee of correspondence were to communicate and publish it, not only to the several towns in the province, but to the world, and, after the sanction of the Massachusetts assembly had been obtained, it was determined that the whole proceedings should be transmitted to the several assemblies upon the continent, for their approbation and concurrence †.

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* There was such concern to obtain a universal consent, that even a district of two hundred Indians, called Mashpee, was not omitted.

† This was at first given out, and the speaker of the house, who was

The plan was carrying into execution with great rapidity. The great towns of Plymouth, Roxbury, Cambridge, Marblehead, Charlestown, Newbury Port, Ipswich, and as many more as made in number a third part of the towns and districts, had assembled, and either approved of the report, or passed resolves in other words, of the same nature and tendency. The most that could be expected was, that some towns and districts would not assemble, but there was little room to hope that any which did assemble, would declare a disapprobation. In Marblehead, opposition was made to it, and, after it was carried, about thirty of the inhabitants, most of them persons of the first character in the town, had firmness enough to declare and make publick their dissent, with their reasons, in an instrument signed by them; but this had little other effect than raising the temper of the prevailing party, and exposing the dissenting party to publick abuse. The votes of some of the towns were very high and inflammatory*.

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was one of the committee of correspondence, afterwards informed the governor, that if it had been carried in the house, it would have been communicated to the other colonies.

* It is probable that such votes or resolves were prepared for the inhabitants, to receive their sanction, and then to be made publick. The general strain of them was calculated to strike the mind and to inflame the passions, but qualified with, now and then, a word to avoid a charge of treason, or other high offence. The town of Petersham, after divers other resolves, declare, "that the late appointment of salaries to be paid to our superior court judges, whose creation, pay, and commission, depend on mere will and pleasure, complete a system of bondage equal to any ever before fabricated by the combined efforts of the ingenuity, malice, fraud, and wickedness of man; that it is the first and highest social duty of this people, to consider of, and seek ways and means for, a speedy redress of these mighty grievances and intolerable wrongs; and that, for the obtaining this end, this people are warranted by the laws of God and nature, in the use of every 'rightful' art and energy of policy, stratagem, and force." The town of Marlborough resolved, "that every town, not only in

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1772 The governor was greatly alarmed with so sudden and unexpected a change in the state of affairs; and he was greatly perplexed with doubts concerning his own conduct upon the occasion. He had avoided engaging in a dispute upon the authority of parliament, having good reason to think, that administration in England expected that the colonies would return to their former state of submission to this authority, by lenient measures, without discussing points of right; and he knew that great pains had been taken to persuade the people in England, as well as the ministry, that this was all the people in America expected or desired; and that suspicions of other views, either in the body of the people, or in men who had influence over them, were groundless, and had been caused by misrepresentations of governors, and other crown officers in the colonies, in order to promote their own sinister views. But now, a measure was engaged in, which, if pursued to effect, must cause, not a return of the colonies to their former submission, but a total separation from the kingdom, by their independency upon parliament, the only band which could keep them united to it. By sitting still, and suffering the assembly to be precluded by the votes of their constituents, he had reason to think that he

this province, but in all the English colonies, and elsewhere in the British dominions, ought to furnish themselves with every thing necessary, 'that is lawful and commendable in the sight of God,' in order to save and defend themselves, and regain, support, and secure our lives, properties, liberties, and privileges, civil and sacred; and that without any further delay." The town of Gorham say, "that it is better to risk our lives and fortunes, in the defence of our rights, civil and religious, than to die, by piecemeal, in slavery." Thus, all on a sudden, from a state of peace, order, and general contentment, as some expressed themselves, the province, more or less from one end to the other, was brought into a state of contention, disorder, and general dissatisfaction; or, as others would have it, were roused from stupor and inaction, to sensibility and activity.

should

should bring upon himself a charge of conniving at 1773 proceedings, the unwarrantableness whereof he ought to have exposed, and the progress whereof to have checked, by every means in his power. By bringing the matter before the assembly, he knew, from past experience, he must bring on an altercation, which they would profess themselves desirous of avoiding; and that they would charge him with raising a flame in the province, under pretence of endeavouring to suppress it. The danger of this charge, and the abuse which he expected to follow it, both in England and America, he did not think would excuse a neglect of a plain duty. He met the assembly sooner than otherwise he would have inclined, and, in a speech at opening the session, he shewed, in as concise a manner as he could, that the colonies were settled as parts of the British dominions, and, consequently, as subject to the supreme legislative authority thereof. He then proceeded to enforce what he had alleged, from the nature of government, which will not admit of two supreme authorities, from the practice of nations in settling colonies, from the charter, and instances adduced from the history of the province, shewing this to be the sense of the people; and then observed, that, while this authority continued to be acknowledged in the Massachusetts province, contentment and good order were the happy effects; that it had, of late, been called in question, and, at length, openly denied; that the inhabitants of towns had assembled for that purpose, and passed votes, and ordered them to be recorded and published, as the votes of "legal" town meetings; that divisions, animosities, a contempt of all authority, and the impunity of offenders, had been the consequences; that, when the bands of government are thus weakened, it behoves those with whom the powers of government are intrusted, to omit nothing which may strengthen them.

1773 them. He intreated them to consider calmly, and not to be too sudden in their determinations. If he was wrong, he wished to be convinced of it. He was willing to hear their objections. They might be convincing to him, or he might satisfy them of their insufficiency; and he hoped, in either case, that they should be able to put an end to the irregularities in the province.

A speech from the governor upon this subject was altogether unexpected, as he had for three years together avoided it, and the members present at the delivery discovered their surprise. It was generally allowed to be a fair unequivocal statement of the arguments against the claim to independency, which few people undertook to answer; but many professed to suspend their judgments, and to remain silent until the council and house should give their answers.

The council, after seventeen days, presented their answer, in which they exculpate the people from being the cause of the discontent in the province, and charge it to the acts of parliament, which had subjected the colonies to taxes without their consent. From the governor's observation, that he knew of no line between the supreme authority of parliament, and the total independency of the colonies, they take occasion to remark, that he supposed an unlimited power in parliament, which with fitness can belong only to the Sovereign of the universe; that the subjects of any state whatever, where the supreme authority is unlimited, must be emphatically slaves; that, from the nature and end of government, the supreme authority of parliament must be limited. What the limits are with regard to the colony, they will not presume to fix with precision, but they hope it will not be deemed arrogance to give some general sentiments. They profess, first, to shew the main principles upon which the
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the English government is founded. For this purpose, they avail themselves of the statutes of Magna Charta,—de Tallagio non concedendo,—of 25 Edw. III., of Loans,—the petition of Rights of Charles I.,—the bill of Rights of William III. Although all these statutes were enacted to limit the authority of one branch only, the king, without including the other branches of the legislative power, and make no mention of any limits to the united authority of all the branches; yet they endeavour to improve them to their purpose, by changing the idea of limits to the degree of the supreme power, for that of the local limits by which the exercise of this supreme power is to be bounded; and argue thus:—It is settled by these statutes, to be the right of Englishmen not to be taxed by any other power than a parliament, which is to consist of the king, the archbishops, bishops, earls, barons, and also knights, burgesses, and other freemen of the commonalty of the realm; and the right, they say, is founded upon this reason, that all parts of the community, by themselves, or by their representatives, should have the disposal of their own property. The inhabitants of the colonies were assured that, notwithstanding their removal from the kingdom, they should continue in the full enjoyment of all the rights of English subjects, of which that of disposing of their property by their own consent, or the consent of their representatives, is one of the most essential. Now, if parliament should extend its power so far as to impose taxes “upon the colonies,” it would be extending it beyond its just limits, and where it cannot be exercised, without depriving those subjected to it of the rights of Englishmen.

A legislative power was, therefore, provided by the charter of the Massachusetts colony, with full powers to impose taxes by their representatives.

Independence,

✓ 1773 Independence, however, they declared they had not in contemplation.

This was their hypothesis. The other parts of their answer consisted, principally, of arguments for supporting it against objections which might be drawn from several parts of the governor's speech.

Mr. Bowdoin, who was chairman of the committee of council, was supposed to have a principal share in the composition.

The answer of the house was much longer than that of the council, and was delayed several days after the other was presented *. Mr. Hawley and Mr. Samuel Adams were the persons who had the greatest share in preparing it, being assisted by Mr. John Adams, who was not at this time a member, but whose character, as a man of strong natural powers, and of good knowledge in the laws, was established.

The answer was plausible, and, in many parts of it, ingeniously adapted to the great purpose of obtaining the voice of the people; but it abounded with duplicity and inconclusive reasonings. They attribute, as the council had done, the disturbed state of the minds of the people to the "British" house of commons. They deny it to have been the sense of the crown, or of the first settlers, that the colonies

* The length of time which these answers took, is partly to be attributed to the dependence upon a gentleman at a great distance. Mr. Delaney, of Maryland, had acquired great reputation, by a pamphlet published in the beginning of the controversy. A messenger, therefore, was despatched to Annapolis, about 500 miles, from the speaker of the house, to desire Mr. Delaney to prepare an answer to the speech, or to afford his remarks upon it. Mr. Delaney excused himself. In such case, the messenger was to apply to Mr. Dickinson, author of the Farmer's Letters. What answer he gave is not known. The author was furnished with this anecdote by Mr. Boucher, who was a clergyman in Maryland, of very respectable character, and received this account from Mr. Delaney.

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were to remain subject to the supré authority of 1773 parliament; and if it could be admitted, that princes in Europe could acquire a right to America by discovery, or from the Pope, yet, as it would be an acquisition of foreign territory not annexed to the realm, it was at the disposal of the crown; and they urge the several charters to shew, that the colonies were not intended to be considered as within the realm of England, though within the allegiance of the crown; and confidently assert, that both James the first and Charles the first had declared, the one, that "America was not annexed to the realm," and the other, that "the colonies were without the realm and jurisdiction of parliament;" and by an equivocal sense given to the word "realm," they lay it down as part of the common law, that no country was subject to the laws, or to the parliament, but the "realm" of England. And in their subsequent reasoning, they say it is absurd, that a charter formed upon a supposition that a colony is not within the "realm," the prince who granted the charter having declared such colony not to be within the jurisdiction of parliament, should yet provide, that laws made by the same parliament, expressly to refer to that colony, should be in force therein. From the governor's history of the colony, they undertake to shew that the authority of parliament had been called in question, and that acts of parliament had been opposed by their ancestors, and that their sense was very different from what the governor in his speech had represented. If he expects that they should draw a line between the supreme authority of parliament, and the total independence of the colonies, they say it would be an arduous undertaking, and of too great importance to the other colonies, to be proposed without their consent in congress. After all they have said, they would by no means be understood to have in the least

1773 least abated that just sense of allegiance which they owe to the "crown;" and if the province should be left to the free and full exercise of the liberties and immunities granted by charter, there would be no danger of an independence on the "crown."

They were careful not to omit casting an odium upon the governor, by expressing their concern, that, by his speech, he should reduce them to the unhappy alternative, of appearing by their silence to acquiesce in his sentiments, or of thus freely discussing the point.

He had directed his speech to the two houses jointly, for their joint consideration, and in such cases it had been the common, and, until lately, almost the universal practice for them to unite in their answer. But now it was thought best to separate, and he found himself under a necessity of giving a reply to each, or appearing to the people of the province to give up the cause, from conviction that it could not be supported. He was determined, however, to cease from altercation, as soon as this objection could be obviated.

And, as the council had declared that they had not independence in contemplation, he avoided a particular reply to the several parts of their answer; and observed, that he should have readily allowed, without the statutes which they had brought to shew it, that tax acts, and all other acts of legislation, require the authority of the lords and commons, as well as the king; that their attempts to draw a line as the limits of the supreme authority in government, and to distinguish some natural rights, as more peculiarly exempt than the rest, rather tended to evince the impracticability of drawing such a line; and he flattered himself, that, upon more mature deliberation, they would choose rather to doubt of the expediency of parliament's exercising

cising its authority in cases which may happen, than 1773 to limit the authority itself.

To the house he was more particular, and, premising that their charge of the disordered state of the province to acts of parliament, could be supported only by admitting that parliament had not authority, which was the matter in question, he proceeded to shew, that, by the English constitution; acquisitions of territory, from the discovery of English subjects, had been considered as made to the crown, not to be alienated, or constituted into governments independent of the supreme legislative power, though it was the prerogative of the crown to grant them to such subjects, and under such forms of subordinate government, as might be thought fit; and that all the colonies had accordingly been granted "to be held of the crown;" and that the legislative supreme authority in the English constitution was as extensive as the authority of the crown itself. He knew of no evidence of the declarations they mentioned to have been made by king James and king Charles, unless a speech made in the house of commons by the secretary of state, perhaps merely his own opinion, that the plantations were not annexed to the crown, and so not within the jurisdiction of parliament, could be considered as the declaration of the king; but had there been evidence, they were declarations directly contrary to their own acts. Besides, they were declarations of princes, who, while they were soliciting the parliament to grant duties and taxes, were claiming and exercising a right, by virtue of the prerogative, of levying such duties or taxes without the parliament. The error, or fallacy, of their reasoning arose from their confounding the crown and the person of the prince.

They had also made the word "realm" to serve their purpose, by confounding the different meanings of it; and though the legislative power cannot extend

1773 tend beyond the realm, when it is made to signify the whole dominion, yet this could not be the rule, when it was used to signify the territorial realm only : accordingly, all countries, to use the words of a very great authority, feudatory of the imperial crown of England, were under the government of the king's laws and the king's courts, in cases proper for them to interpose, though, like counties palatine, they had peculiar laws and customs, *jura regalia*, and complete jurisdiction at home. He shewed, from a great number of instances, the acquiescence of the people under the authority of parliament, and that, ever since the revolution, no doubt had been made of it. The instances they had brought from his history did not contradict his speech, in which he had acknowledged such instances only as were the effect, and about the time, of the anarchy in England ; and those which they had adduced were of that sort.

To their charge against him for bringing this subject before them, he observed, that the capital town of the province had voluntarily discussed, and determined upon the subject, and invited every other town to do the like ; which reduced him to the alternative of rendering himself justly obnoxious to his sovereign, by acquiescing in such irregularities, or of calling upon them to join with him in suppressing them.

It was apparent to the governor, that there was no probability that either the council or the house would recede from any point. He doubted, however, of the expedience of closing the session, without giving them an opportunity of being further heard, which both council and house appeared to desire.

The council, in their rejoinder, attempt to explain what they meant by the limits of the supreme authority, and refer the governor to a paragraph in his speech to them, in which he observed, that, " though from the nature of government there must be one
supreme

supreme authority over the whole, yet the constitution will admit of subordinate powers, with legislative and executive authority, greater or less, according to local, and other circumstances ;” and from thence they infer, that, if this subordinate authority does not exceed its limits, and forfeit its right, but confines itself to the objects to which it was designed to extend, the supreme authority has no right to take it away ; and they say that, in fact, two such powers do subsist together, and are not incompatible. They complain, that the governor had dismembered their argument drawn from “ *magna charta*,” and other statutes, which were brought to shew, that it is the essential right of free subjects within the realm, to be free from all taxes except such as were laid with their own consent—that they have not seen cause to change their sentiments with respect to that matter, nor any other contained in their answer to the governor’s speech. The house, without the least room for an insinuation of that sort, “ trust the governor does not mean to introduce the feudal system, in its perfection ;” and, after a formidable representation of it, and reciting a part of the governor’s speech, which declares the grants of America to be made upon feudal principles, they inquire what could hinder, upon these principles, from constituting independent colonies in America ; and allege that, though they hold their lands from the king upon feudal principles, yet their predecessors wisely took care to enter into compact with him, that power should be equally divided, agreeably to the original principles of the English constitution ; and though the governor had “ denied ” the fact, that this “ compact ” was without any reservation of power to the English parliament to make future laws to bind them, yet he had not “ disproved ” it ; nor had he shewn, that the parliament, or nation, objected to the powers conceded by that compact,
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1773 of making and executing laws; and from thence they had inferred it to be an acknowledged right. They charge the governor with misinterpreting their saying, that, by the common law, no country was subject to the laws, or the parliament, but *the realm of England*," and explain their meaning by an authority which shews that the laws of England are confined to the *English dominions*; and when the governor, from a great authority, had urged that, the colony being feudatory of the imperial crown of England, it necessarily follows, that it is under the government of the king's laws, though it might have peculiar laws and customs within itself, they conceive the meaning must be, that, being feudatory, it is under the king's laws *absolutely*, because the feudal system admits no idea of the authority of parliament; and this, they say, would have been the case of Massachusetts, if it had not been for the compact with the king in the charter. They apprehend the governor is mistaken, in supposing their allegiance to be due to the crown of England, and attempt to shew from lord Coke, that it is due to the natural body alone of the king, and not to the politick body; and from thence they infer, that it is not due to the king, as the head of that legislative authority which the governor had said to be equally extensive with the authority of the crown through all parts of the dominions; and therefore his observations thereon must fail, or lose their force: their ancestors, they add, received by grant from the king, lands which could not, on any solid grounds, be claimed by the nation; and, at the same time, compacted and promised homage and allegiance, not in his publick, or politick, but natural capacity only. Having thus declared a complete system of independence, in the remainder of their answer, they largely endeavour to shew, from the governor's history of the colony, and from other evidence, that their ancestors had

had the same sense of the constitution ; that their 1773 principles are founded upon natural reason, and supported by the authorities of the most celebrated writers upon the laws of nations, and upon civil and ecclesiastical polity ; and they are careful to express anew their great concern that the governor had thus repeatedly, in a manner, insisted on matters of so delicate a nature, and weighty importance ; no less than whether they are the subjects of absolute, unlimited power, or of a free government, founded upon the principles of the English constitution.

The style, both of council and house, in this controversy, was correct, and their reasoning plausible, and the facts so represented, and such construction made of them, as to give a favourable appearance to a system which was delusive, and a mere figment.

The governor deferred what he intended should close the dispute, until the time for the close of the session.

The argument of the council, deducing the rights and liberties of English subjects, mentioned in the charter, from the ancient charters, which were merely intended to limit the prerogative of the crown, and not to settle any parts or proportions of freemen, or other orders of subjects, in acts of legislation, being so frivolous ; and the plain, full sense and meaning of those words having been sufficiently laid down in his speech, he confined himself to their observations upon the nature of supreme power, and urged, as an undeniable principle, that such a power is essential in all governments, and that another power, with the name of subordinate, and with a right to withstand or control the supreme in particular cases, is an absurdity—for it so far ceases to be subordinate, and becomes itself supreme ; that no sensible writer upon government ever denied what he asserted ; and whilst the council continued to hold, that two supreme powers were compatible, it would be

1773 be to no purpose to reason upon the other parts of their message to him, or to deny what they deduced from a principle so contrary to reason *.

In his answer to the house, he observed, that they had been misled, by having the doctrine of feudal tenure brought before them, as it respects absolute monarchies, and not as it is connected with, or grafted upon, the English constitution. And, after a brief history of it in England, and of its being controlled, from time to time, by the legislative power, until it was reduced, at the time when the colonies were granted, to something little more than a mere name; he gave them a familiar instance of the different effects of it in an absolute, and in a mixed monarchy, from the settlement of Canada, and of Massachusetts Bay, both about the same time. The French king, having in him not the regal only, but the legislative authority also, the French continued to be subject, in Canada, to him only, in like manner as they had been subject in France; but the king of England, having the regal, but not the legislative authority, could grant no more than was in him; and the English in Massachusetts Bay, notwithstanding they acquired a right to the soil, and to subordinate legislative authority, which the king, by virtue of his regal authority, might grant, yet they remain subject to the legislative authority of parliament, which the king had no right to free them from. The fabrick which they had raised, and

* The house saw the difficulty they should be involved in by admitting two supreme powers, for if there be no umpire to judge when one or the other exceeded its just limits, contests must soon arise, and one or other would soon become the sole power; or otherwise both would be dissolved, and anarchy take place of government. And if an umpire be admitted, the umpire would be supreme, and the other two subordinate. In order to maintain their own authority, they found it necessary to exclude all others.

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which they supported upon the principles of feudal 1773 tenure in an absolute monarchy, must, therefore, fall.

In reply to their strange suggestions, that, by the king's laws, are meant "laws of the king absolutely," or without the two houses of parliament, and that their ancestors owed allegiance to the king, in his natural, and not in his politick capacity, he asks them, whether any of them remember ever to have seen the expression, the king's laws, meaning the king of England, used in any other sense than "the laws of the realm," and whether they had any clear idea of allegiance to a king in his "natural" capacity without any relation to his "political" capacity.

Their attempts to shew, that it had not been the general sense of the colony, especially from the date of the last charter, that it was subject to acts of parliament, were so contrary to the feelings of every man, and their passing over the most material part of the instances which the governor had laid before them, and assigning reasons for others, which had no foundation, was so glaring an evasion, that he declined any answer, except observing that, by deviating from the true state of facts, a controversy may be lengthened out to perpetuity*.

This controversy between the governor and the two houses seems to have stopped the progress of the resolves of the town of Boston, very few towns or districts assembling after the governor's speech; the house, therefore, instead of taking up the re-

* These several messages being printed, by order of the house, in a pamphlet, which fell into the hands of a person of the first rank, as well as reputation, in the law in England (Thurlow), he wrote his sentiments as follows: "It is a very succinct and judicious digest of the argument upon the relation of the colonies to the metropolis. The good sense of it required another sort of answer, than shuffling, and slipping over the principal topicks; and the candour of it deserved another return, than personal reflection, and a confident reiteration of the topicks which had been overturned."

solves

1773 solves of the town of Boston, as it was proposed they should, came into a set of resolves in another form ; in the first of which they declare, that the admitting any authority to make laws binding on the people of this province in all cases whatsoever, saving the general court or assembly, is inconsistent with the spirit of our free constitution, repugnant to our charter, &c. From the equivocal sense of this expression, "in all cases whatever," the speaker of the house, in what he called a private letter to lord Dartmouth, the secretary of state, made it a matter of merit, that though the governor had forced this controversy upon the assembly, and the house had been, as it were, "driven" to such lengths as they had gone, yet they had avoided an "express" declaration of independency.

The controversy on this subject seemed to be pleasing to very few persons either in America or in England. There was a general desire on all sides to avoid a direct decision of the controverted points. The friends to government, in America, knew that they should be borne down with numbers. The leaders of the other side found their account in amusing government in England with professions of a partial submission, or the acknowledgment of some sort of subordination ; and the people were not prepared for a total disavowal. The promoters of the cause of the colonies in England gave assurances to the king's ministers, that independency was not the object, and that lenient measures would restore former quiet and contentment, while they encourage the leaders in the colonies to give up no point which they had asserted, to be firm in the opposition which they had begun, but to avoid riots and tumults, and whatever might alarm the ministry with apprehensions of a complete defection. The ministry, and such as adhered to them, hoped for success from this plan, and that, by receding from the acts to which the greatest exception had been taken,

taken, the authority of parliament in other cases 1773 might be preserved.

The governor had written to the secretary of state, several weeks before the session began, and acquainted him with the proceedings of the town of Boston, and the unpleasing necessity he should be under, of calling upon the two houses to join with him in proper measures upon the occasion. His design was approved of, and it was thought advisable to postpone the consideration of the state of the colony until he should transmit the result of the assembly's deliberations. When his speech appeared, though the intention of it was justified, it was made a doubt whether it was expedient for him to have entered so fully into his own opinion of the constitution of the colony; but it was hoped, nevertheless, that the speech might tend to remove the prejudices which the opposers of government endeavoured, by their artifices, to fix in the minds of the members. Dr. Franklin wrote to the speaker, that the ministry would not thank the governor.

When the answer of the house appeared in England, publicly avowing doctrines subversive of every principle of the constitutional dependence of the colonies upon the kingdom, it was said, "there is no room to hope that argument and persuasion will induce them to yield due obedience to the laws of parliament," and it was recommended to the governor, "to avoid any further discussion whatever upon those questions, the agitating of which had already produced such disagreeable consequences."

The governor, before he had received this recommendation, was convinced that argument and persuasion would not prevail on the assembly to yield any point whatever; but he hoped, notwithstanding, that good consequences, rather than bad, would follow

1773 the controversy. The facts, and the reasoning upon them, in the answers both of the council and house, were so erroneous, that there was no appearance of a more favourable opinion of the justice of their cause, either in the minds of the people of Massachusetts Bay, or of any of the other colonies. On the contrary, the province was remarkably quiet, until matter was found for fresh disturbance, at the session of the assembly of the ensuing summer. If there had been no check given to the progress of the resolves of the town of Boston through the province, and from thence through the other colonies, there was reason to fear much more disagreeable consequences.

The other four resolves which passed in the house of representatives, related to the salaries of the judges. The house, in a message to the governor, had desired him to inform them why he had refused his assent to the grants for the salaries of the judges from the general assembly; and gave as a reason for their request, that the people without doors were universally alarmed with a report, that salaries were established by the king. He let them know that he had the grants still under consideration; that salaries had been granted by the king for their services, during part of the time for which their salaries had been granted by the assembly; that he was willing to take a proper caution that the grants of the assembly should have effect for such time only, as preceded the commencement of the grants from the king; and as the delay of his assent proceeded from a regard to the interest of the province, as well as from his duty to the king, he hoped that it would not be thought unnecessary.

It seemed at that time to be the intention of the judges to receive the salaries granted by the king, and to take only so much of what was granted by the
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the assembly as was due to them before the grant 1773 from the crown. Their warrants were not then come to their hands.

The house resented with much warmth this answer of the governor, and in a message* tending to inflame the people, among other things, they say to him, that his precaution is comparatively of very small consideration with them; they should be lost to all publick feelings, if they did not manifest a just resentment at the many attempts upon their charter, and the freedom of their constitution; and they are more and more convinced of the designs of administration, totally to subvert the constitution, and to introduce an arbitrary government into the province: they cannot wonder that the apprehensions of the people are thoroughly awakened; they wait with impatience to know whether the justices will utterly refuse ever to accept of support in a manner so justly obnoxious, &c.

And a few days after†, by another message to the governor, they say, that they think it of the last importance to pray him to inform them, whether he can now satisfy the house, that the justices of the superior court have refused, or will refuse, to accept of their support from the crown.

He let them know immediately, that he was not able to inform them that those justices had refused, or would refuse, to accept of such support. This cleared the way for a personal application to the justices, and a committee was sent to them by the house, to inquire of them, whether they intended to receive the salaries granted by the crown? They answered, that they knew nothing more of such salaries, than what they had learned from the messages between the governor and the house; that there was no propriety in their coming to a deter-

* Feb. 12th, 1773.

† Feb. 16th.

1773 mination until they should receive their warrants, or should be informed what would be the tenor of them.

This seemed to be a check to the progress of this business for a time ; but several persons, members of the committee of correspondence for the town of Boston, thought fit to interest themselves, and presented a petition to the house, complaining of their delay, and urging further and more effectual measures. Twenty-nine members of the house, eighty being present, had fortitude enough to vote for rejecting the petition. The other members voted for receiving and committing it. This was disapproved of by the inhabitants of the town of Boston in general, and caused a great clamour among them the next day. A few persons, it is said, with Mr. Molineux at their head, had taken upon them to direct the great council of the province. The members for the town were alarmed, and, sensible that they had gone too far, moved, as soon as the house met, for a reconsideration of the vote for committing the petition, that the petitioners might have leave to withdraw it, and that the proceedings of yesterday should be erased. These motions were all approved of, and demonstrated the influence of three or four members over the body of the house.

The superior court in Boston was to be held in a few days, and it was intended to oppose their proceeding on business ; but the failure of this petition frustrated the design, and the opposition to the court was delayed to a more convenient time.

One effect of the grant of salaries by the crown was very observable. The judges for many years had been complaining of the inadequateness of their salaries to their services, and had often applied without success for an enlargement. To remove this objection, the house this year raised the grant to the chief justice from two hundred to three hundred pounds

pounds lawful money, and to the other judges, from 1773 one hundred and sixty to two hundred and fifty pounds; and it having been further objected, that the assembly always delayed the grant of the salary until the service was performed, and kept the judges dependent, whereas the salary from the king was to continue during their continuance in office, and even when absent from the province with leave, which left them altogether free and independent, the house, to obviate this objection in part, now, for the first time, made a further grant of the like sums for the year to come, as those for the year past.

As the apparent intent of this unprecedented grant was to frustrate the king's grant, the governor could not give his assent; but he let the assembly know, that he would transmit their vote by the first opportunity, that he might receive the earliest signification of the king's pleasure.

If the house would have made their grant in the same form with that from the king, it is probable that the controversy would have been at an end. The object of the crown was the freedom of the judges. If their salaries had been secured to them, it was immaterial whether they received them by a warrant on the province treasurer, or on the commissioners of the customs. But the house held that they ought to depend upon the people; and the last message from the governor was the immediate occasion of the resolves, the concluding one being of a very high nature and intimidating tendency, declaring it to be "the opinion of the house, that, while the judges hold their commissions during pleasure, any one of them who shall accept of, and depend upon the pleasure of the crown for his support, independent of the grants and acts of the general assembly, will discover to the world that he has not a due sense of the importance of an impartial administration of justice, that he is an enemy to the
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1778 the constitution, and has it in his heart to promote the establishment of an arbitrary government in the province."

This resolve, like many others, was ambiguous and delusive. Although the judges were nominated by the governor, yet neither the governor, nor even the king, could remove them without the consent of the council, which consent it was not probable would be given during the good behaviour of a judge. If, therefore, they had been placed upon the footing of the judges in England, and made removable upon the address of the council and house of representatives, it would have been an alteration so immaterial, that the governor, hoping it might tend to quiet the minds of some, though he expected, if this difficulty was removed, some other would come in its place, ventured to propose the expedient to the secretary of state. The proposal was favourably received, but the increase of troubles rendered all expedients insignificant and vain.

The governor still had no apprehension of even a wish in the body of the people in the province to separate from the kingdom, and, at the desire of the house of representatives, made a general settlement of the militia through the province, being only careful to give commissions to such persons as were well affected to government, as far as he could inform himself; and, lest he should shew to the people a jealousy of a contrary disposition in them, consented to a grant made by the house for purchasing a number of field pieces in England, for the use of artillery companies on training days*.

* The person intrusted with this money applied it to other uses, and desired his correspondent in England to send the field-pieces, promising remittance. This caused some delay, or, for some other reason, they were not shipped, until the disorders rose to such heights in the province, that the ministry, receiving information that such pieces were preparing, gave orders to stop them.

A con-

A controversy, which had subsisted from the 1773 early days of New England, between the two governments of Massachusetts Bay and New York, concerning boundary lines, was finally settled, to the satisfaction of both governments, in the year 1773. A treaty had been had at Newhaven, between commissioners from each colony; Mr. Hutchinson, then lieutenant-governor, being at the head of the Massachusetts commissioners; but the treaty was broken off without a settlement. Commissioners had been appointed again, by an act of each government, in 1772, and the determination of such commissioners was to be laid before the governors of each colony, who were desired to be present; and, being by them approved, was to be obligatory on each government, without its being laid before the assemblies, and was by the governors to be transmitted to the secretary of state for the royal confirmation. Notwithstanding the political disputes in which the Massachusetts governor had been engaged for several years, there is no instance of the like confidence placed by a Massachusetts assembly in their governor, in a case of such nature, and of so great importance. And, what made it more extraordinary, the commissioners were not restrained by their instructions to any limits which they were not to exceed; which caution had been usually, if not always, observed in other cases of the like kind*.

The

* This treaty was held at Hartford in Connecticut, and began the 12th of May, 1773. The commissioners on the part of Massachusetts Bay were William Brattle, Joseph Hawley, and John Hancock, esqrs. The weight of the business lay upon Mr Hawley. One point, which may prove of importance, was saved to Massachusetts Bay, altogether by the governor's influence. The New York commissioners urged, as one of the indispensable articles, that Massachusetts should relinquish their claim to the territory westward of the colony of New York, and the Massachusetts commissioners were disposed to a compliance; but, upon consulting the governor,

1773 The line was settled more favourably for the Massachusetts than was expected, which, as the commissioners acknowledged, was principally owing to the governor being present with them, and he flattered himself that he should be cordially received upon his return to the province, and that the session of the assembly for election, which was to come on soon after, would not be less pacifick than those which had preceded.

But, upon his arrival in Boston, he found that fuel had been prepared, to raise a greater flame than had been known before.

The two colonies of Virginia and Massachusetts had been considered as the principal or leading colonies in all great and important improvements upon the general plan; and the most free and open declarations had been advanced, in some instances, by one, and in other instances by the other, of those colonies; and whatever began in one, seldom failed of approbation in the other.

The first notice which appears of the resolves of the town of Boston, was by the assembly of Virginia, and that very soon after they had passed *. They seem

governor, were advised and encouraged to refuse to concede the demand, and it was no longer insisted on by the commissioners from New York.

* The following extract of a letter from a gentleman of distinction in Virginia, to his friend in Boston, dated 14th March, 1773, appeared in the Boston newspapers. "I received the papers you sent me, and am much obliged to you for them. Our assembly sitting soon after, they were of use to us. You will see, by the enclosed resolutions, the true sentiments of this colony, and that we are endeavouring to bring our sister colonies into the strictest union with us, that we may resent, in one body, any steps that may be taken by administration to deprive any one of us of the least particle of our rights and liberties. We should have done more, but we could procure nothing but newspaper accounts of the proceedings in Rhode Island. I hope we shall not be thus kept in the dark for the future, and that we shall have, from the different committees, the earliest intelligence of any motion that may be made

seem to have produced a set of resolves, one of 1773 which, appointing a committee to correspond with a like committee of the assembly of each of the other colonies, whose business should be to obtain intelligence of all acts of the British parliament, and all proceedings of administration affecting the colonies, and reciprocally to communicate the same, seems to have laid the foundation of that union of the colonies, which was afterwards bound or secured by the establishment of a general congress, as a supreme authority over the whole. The congress was suggested by Dr. Franklin, in a letter to the speaker of the Massachusetts assembly, if it should be necessary.

The interference of the town of Boston in an affair, which in itself was of no importance, had also been made to disturb the minds of the people. It had been the practice for the governor to dine in publick with the council and such company as was invited upon election day. And the town-hall, being the most convenient room, had for several years been the place of entertainment, upon notice to the select men, that the use of it was desired. It was thought, this year, to be an affair of such importance, as to deserve the notice of the inhabitants in town meeting; and the town came to a resolve in form, "that, if a committee of his majesty's council should apply to the select men for the use of the hall, they should consent upon these express conditions, that neither the commissioners of the customs and their attendants, nor the officers of the army and navy, stationed here for the purpose of enforcing unconstitutional acts of parliament by military execution, be invited, it being utterly against the inclination of the town,

made 'by the tyrants in England,' to carry their infernal purpose of enslaving us into execution. I dare venture to assure you, the strictest attention will be given on our parts to these grand points."

that

1773 that even "one" person who had rendered himself inimical to the rights of America, should be admitted into the hall, upon such an occasion.

This resolve was published in the newspapers, and a copy of it, by order of the town, was given to the committee of council by the select men.

When the governor came to town, it may well be supposed that he refused to comply with such condition; but he took no other notice of the indignity than by acquainting the council that he should not dine in publick, unless he was at liberty to invite such company as had been usual on such occasions. Upon this declaration, another room was provided, and the obnoxious persons were invited.

But there was another affair, which had a more direct tendency to alarm the people, and which was managed with great art, and succeeded beyond all expectation.

About the same time that the statement of the rights of the American colonies, which the town of Boston made the foundation of their resolves, came from England, Dr. Franklin sent, or caused to be sent, to the speaker of the house, several original letters, written by the governor and lieutenant-governor, and one by Mr. Paxton, a commissioner of the customs, with another by Mr. Rogers, a merchant in Boston, to Mr. Whately, a member of parliament, who died before the time of sending over the letters to the speaker. There were also sent with them two letters from gentlemen in Rhode Island. The speaker was enjoined to return the letters, and was at liberty to shew them to five persons only. The plan, at first, seems to have been to enable these persons to say that they had been intrusted in confidence with the sight of such letters, and were not allowed to produce them, but knew them to be the hand-writing of the persons whose signature they bore. This, it is probable, was not thought likely to answer any valuable

valuable purpose, and, while under that restraint, it 1773 was judged prudent to make no mention of them; and they had remained six or eight months in the province without so much as a whisper concerning them. In this time, liberty had been obtained to shew them to such persons as should be thought fit, provided no copies were taken.

One session of the assembly had passed in the winter, during which they could not be made use of; but, at the session for election, it was resolved to produce them. A few weeks before the session began, it was whispered about, that there were letters in town, procured from England, written by some great men, which were proofs of a conspiracy which had been long carrying on, for enslaving America, and that the letters would soon appear. This was a necessary part of the plan, that the minds of the people might be impressed with an opinion of something very bad, in order to render them more susceptible of the construction which was to be put upon the letters, when they should be produced. Great pains had been taken to procure copies of the governor's letters to the ministry, but, after the publication of governor Bernard's letters, more care to prevent copies being given had been taken in England. The letters of governor Hutchinson, containing an account of the proceedings on the 5th of March, had, however, been obtained, but it was not thought proper to publish them, nor was any exception taken to them. At length, such letters had been procured as would astonish every body. This was the language of the people, when the governor returned to the province*.

The

* The governor received early information from whom, and to whom, these letters were sent, and with what injunctions, from a person let into the secret, who detested the whole proceeding, as iniquitous

1773 The assembly met a few days after. The election of the council discovered that there had been no change in the house favourable to government. Four * of the council of the last year declined further service, pleading age or infirmities; there had been two vacancies the last year, and two † of the council of the last year, who had been too uncomplying with the measures of the house, were not elected; so that eight new councillors were chosen. To three ‡ of them, two of whom had taken a very conspicuous part in the opposition, the governor refused his consent. The other five §, he knew, were well affected to the same side; but if he had refused his consent merely for this reason, a quorum would not have remained, and it was not a time for such an experiment.

iniquitous in every part; and this information was afterwards confirmed by a letter from Dr. Franklin, in London, July 7th, 1773, in which he writes to his correspondent in Boston, as follows:—
 “ You mention the surprise of gentlemen, to whom those letters have been communicated, at the restrictions wherewith they have been accompanied, and which they suppose render them incapable of answering any important end. The great reason for forbidding their publication was an apprehension that it might put all the possessors of such correspondence here upon their guard, and so prevent the obtaining more of it. And it was imagined, that shewing the originals to so many as were named, and to a few such others as they might think fit, would be sufficient to establish the authenticity, and to spread through the province so just an estimation of the writers, as to strip them of all their deluded friends, and demolish effectually their interest and influence. The letters might be shewn even to some of the governor's and the lieutenant-governor's partisans, and spoken of to every body, for there were no restraints proposed to talking of them, but only to copying. *And possibly, as distant objects, seen only through a mist, appear larger, the same may happen from the mystery in this case.*”

* Thomas Hubbard, Nathaniel Sparhawk, John Bradbury, and Thomas Saunders.

† Harrison Gray, and Stephen Hall.

‡ Jerathmeel Bowers, William Phillips, and John Adams.

§ John Hancock, John Whitcomb, Humphry Hobson, John Winthrop, and Jedidiah Prebble. Mr. Hancock and Mr. Whitcomb declined taking their seats, and remained in the house.

The

✓ The first publick act of the house, and this not in 1773 consequence of the deliberation and report of a committee, the usual way of proceeding, but upon the motion of Mr. Adams, was a number of resolves, in consequence of letters received from the speakers of Virginia and Rhode Island. In the preamble to the resolves are declared the necessity and importance of an union of the several colonies, at a time when their just rights and liberties are systematically invaded. The resolves are conformable to those of Virginia, and a standing committee of fifteen members of the house was established to correspond with committees of the other colonies. A circular letter was ordered to the speakers of all the other assemblies on the continent, inclosing the resolves, and recommending a ready and cheerful compliance with the wise and salutary resolves of the house of burgesses of Virginia.

✓ This important act of the house was suddenly passed, when one hundred and thirteen members were present, of whom four * only gave their voices against it. It was a most glaring attempt to alter the constitution of the colonies, by assuming to one branch of the legislature the powers of the whole; by continuing, by delegation, powers of government, after the authority from which the delegation was derived had expired; and by uniting in one body a number of bodies, which, by their constitutions, were intended to be kept separate and unconnected. It was an act which ought to have been considered as an avowal of independency, because it could be justified only upon the principle of independency.

A stand, made at this time by government in England; a stop put to all legislative acts whatever by the prorogation or discontinuance of all as-

* Abijah White, Thomas Gilbert, Jeremiah Leonard, and John Murray.

semblies,

1773 assemblies, except for the purpose of restoring and acknowledging the constitutional subordination of the colonies; and a visitation of the colonies, by lords and commoners, under the authority of parliament, before the body of the people were engaged in favour of independency, and before the union of government, or of sentiments, was perfected,—might have had the happy effect of restoring peace and quiet, or otherwise must have removed all doubts of the real designs of the leaders of the people; and, in such case, it would certainly have been good policy, either to have left the colonies to their claim of independency, or to have used the means necessary to compel to submission without delay. But an opinion still prevailed, against demonstration, that independency was not the object; that, by reasonable concessions, the colonies would be induced to acknowledge such a degree of authority in parliament, as ought to be exercised; while, in the mean time, advances were every day making to render reconciliation more difficult.

The governor was instructed, upon this occasion, to signify to the council, and house, his majesty's disapprobation of the appointment of committees of correspondence, in various instances, which sit and act during the recess of the general court by prorogation. The house evaded the question upon their "constitutional right," and observed, that until the grounds and reasons of this disapprobation are explained, a full answer cannot be expected; but they cannot omit saying, that, while American rights are attacked at times when the several assemblies are not sitting, it is highly "necessary" that they should correspond, in order to unite in the most "effectual" means to obtain redress of grievances; and as, in most colonies, the assemblies sit at such times as governors, who hold themselves under the direction of administration, think fit, it must be expected

expected that the intention of such correspondence ¹⁷⁷³ will be made impracticable, unless committees sit in the recess. And as it had been the practice for the governor and lieutenant-governor of this province, and other crown officers, at all times, to correspond with ministers of state, and persons of distinction and influence in the nation, in order to concert and carry on the measures of British administration deemed grievous by the colonists, it could not be thought "unreasonable," or improper for the colonists to correspond with their agents as well as each other, that their grievances might be explained to his majesty, that, "in his justice," he might afford them relief; and as, heretofore, the province had felt the displeasure of their sovereign, from misrepresentations, there was room to apprehend that, in this instance, he had been misinformed by such persons as had in meditation further measures destructive to the colonies, and which they were apprehensive would be defeated by means of committees of correspondence, sitting and acting in the recess of the respective assemblies.

This was too serious an affair to be treated ludicrously, and it soon after appeared to be sporting with firebrands, arrows, and death*.

Soon

* These remarks were not made by the house until after the proceedings upon the letters of the governor, lieutenant-governor, &c.; and they were intended as sarcasms upon the governor, with pointed references to the several parts of those proceedings. The gravity and dignity, which are essential to the messages to and from the branches of the legislative body, were changed for the levity and vulgarity of a common newspaper essay, and the public interest, which ought to be the sole influential motive to all the acts of such a body, was sacrificed to the indulgence of personal malice and revenge. With an artful allusion to the controversy upon the subject of "the king's instructions," which the governor had alleged, in all lawful things, to be a rule of conduct, they insinuate, that he held himself under "the direction of administration." The dissingenuity, and low craft, which appeared in so many of the
messages

1773 Soon after the committee of correspondence was elected*, Mr. Hancock acquainted the house that, within eight and forty hours, a discovery would be made, which, if rightly improved, would put the province into a happier state than it had been in for fourteen years past.

This was designed still further to raise the expectations of the people, and the report of the declaration soon spread from the gallery of the house through the town, and from thence to all parts of the province.

At the time proposed, Mr. Adams desired that the galleries might be cleared, as he had matters, which greatly concerned the province, to communicate with the leave of the house. They were ordered to be cleared, and all the members of the house were enjoined to attend. He then acquainted the house, that he had observed the minds of the people to be greatly agitated with a prevailing report, that letters of an extraordinary nature had been written and sent to England, greatly to the prejudice of the province,—that he had obtained the letters, and the consent of the gentleman who received them to their being read in the house, under certain restrictions, namely, that they be neither printed nor copied, in whole or in part; and, upon those terms, he offered them to the consideration of the house. They were received, and ordered to be read under those restrictions; and were committed to a committee of the

messages, resolves, and other publick instruments, and which proceeded from the hearts of a few individuals only, undeservedly brought reproach upon the whole country, which, perhaps, had as great a proportion of men of honest, upright minds, as any other part of the world.

* The following members were elected of this committee: The Speaker, Samuel Adams, John Hancock, William Phillips, William Heath, Joseph Hawley, James Warren, Richard Derby, Elbridge Geary, Jerathmeel Bowers, Jedidiah Foster, Daniel Leonard, Thomas Gardner, Jonathan Greenleaf, and James Prescott.

whole

whole house, who agreed upon a report, that the 1773 letters, without any discrimination, tended, and were designed, to overthrow the constitution of the government, and to introduce arbitrary power into the province *. And the report was accepted by the house, five members only, in one hundred and six, dissenting †.

This report and the vote of the house thereon were made publick, and the minds of the people were impressed for more than fourteen days before the letters themselves appeared.

During this time, various accounts were given by the members of the house, but, it is natural to suppose, all tending to confirm the truth and justice of their own report, and to raise an abhorrence of the governor and lieutenant-governor.

It was not in the power of the governor to put a stop to the proceedings of the house, by a prorogation or dissolution, without a worse consequence than what would follow from their continuing to sit. The construction would have been, that a consciousness of guilt had induced him to take that measure. He thought proper, however, the next day after the resolve, by a message to the house, to desire a transcript of their proceedings, and to be informed what letters they referred to, that he might consider what steps were proper for him to take ; and in the message observed, that no publick or private letters had ever been written with such intention, or which were liable to such an effect, as they had declared. This moderation produced a very rude resolve, that they would furnish him with the dates of the letters referred to in his message, provided he would order

* They were from six different persons, Andrew Oliver, Thomas Hutchinson, Charles Paxton, Thomas Moffatt, Robert Auchmuty, Nathaniel Rogers, and George Rome. In this order the names were printed upon the journal of the house.

† June 2nd.

1773 to be laid before the house copies of all the letters, of the same dates, written by him relating to the publick affairs of the province. But, after two days, they thought fit so far to reconsider this resolve, as to send him the dates of the letters, and a transcript of their proceedings, and to desire him to send copies of such letters as he had written of the same dates, and of any other letters he thought proper*.

Their request, it must be supposed, he did not comply with. By a message, he let them know†, that he thought it improper and out of character to lay his private letters, and he was restrained by the king from laying his publick letters, before them; but he could assure them that neither one nor the other tended, or were designed, to subvert, but rather to preserve entire the constitution of the government; that the letters of which they had given him the dates, if they were genuine, must be part of a friendly correspondence with a gentleman in London, which contained nothing more upon the subject of the constitution of the colonies in general, than what had been published in his speeches to the assembly, as well as in a more extensive manner to the world‡; and that none of them had any respect to the particular constitution of the province, derived from the charter.

By this time, the people of the town had grown very uneasy at being so long alarmed with a declaration of measures of so dangerous, as well as criminal tendency and design, without an opportunity of forming any judgment upon them; and, immediately after the message from the governor, a

* After two days taken to prepare a short message, they adjourned for three days more, and kept the publick in suspense from Thursday to Tuesday, every day producing a new report of passages in the letters, more and more criminal.

† June 9th.

‡ In his History of Massachusetts Bay.

pitiful expedient was found out. Mr. Hancock 1773 acquainted the house, that a person in the street had put into his hands a number of papers, which appeared to him to be copies of the letters which were lying before the house, and he moved that they might be compared; and an order passed for that purpose. It seems to have been intended as an excuse for the publishing of what had been delivered upon an express condition not to publish. And, the next day, a committee was appointed to consider of some means "honourably" to make the house fully possessed of the letters, communicated by Mr. Adams under certain restrictions. In a very few hours, Mr. Hawley reported from this committee, that Mr. Adams had acquainted them, that, as copies of the letters were already abroad, and had been publicly read, the gentleman from whom the letters were received gave his consent, that the house should be fully possessed of them, to print, copy, or make what other use of them they pleased, relying on the goodness of the house that the original letters be returned, in their own time, they retaining attested copies of the same for their use*.

The house then ordered the letters to be printed, but, before they were suffered to be made publick, the resolves of the house upon them were printed and dispersed in newspapers through the province, and a recital of any parts or expressions in the letters was carefully avoided, and only the general design and tendency of them declared.

Facts are said to be misrepresented, and exaggerated, and set in a light injurious to the province, and to particular persons †, against whom the letters

* The puerility of this part of the business, in order to be possessed of the letters in an "honourable" way, added much to the general "dishonour" which attended all other parts of it.

† This refers to Mr. Hancock, one of the letters giving a particular account of the seizure of a vessel of which he was the owner, for

1773 are declared to have been written; and,—considering the persons by whom they were written; the matters they contain; the reference, for full intelligence, to the person * by whom they were sent; the notice of divers other persons †; the measures they suggest; the temper in which they were written; and the person to whom they were addressed ‡,—it is resolved, that they had a natural tendency to alienate the affections of the king from his loyal province; to destroy the harmony between Great Britain and the colony; to excite the resentment of the British administration; to defeat the endeavours of agents and friends, for the service of the province; to prevent humble, and repeated petitions from reaching the royal ear; and to produce the severe and destructive measures which have been taken against the province, and others still more so, which have been threatened. This is the substance of the resolves, so far as they had respect to the “governor’s” letters, except that they had been written in confidence of secrecy, to prevent their contents from being known in the province until it was in a more

for illicit trade; the riot that followed; and of his influence over the people.

* Mr. Hallowell, the comptroller of the customs, one of the persons who made the seizure, who could best give a particular account, fallaciously represented to be a reference for general intelligence.

† The commissioners of the customs, who had suffered as servants of the crown, and whose characters in one of the letters are set in a just light.

‡ Thomas Whately, esq., a member of parliament, who had been in office when Mr. Grenville was at the head of the treasury, but at the time when the letters were written was out of office, in opposition to ministry, and very unlikely to communicate any intelligence to them; and the governor was assured, after Mr. Whately’s death, by a person of high rank and character, and who had been the friend and patron of Mr. Whately in the latter part of his life, that no part of this correspondence had ever been communicated to him, and he verily believed to no other persons, no man having more delicacy in such cases than Mr. Whately.

settled

settled state; and it was therefore resolved, that 1773 they were insidious *.

But, as the principal design of this whole proceeding was to make the governor obnoxious to the people of the province, among whom, they say, he has been practising every method to fix in their minds an exalted opinion of his warmest affection for them, and of his unremitted endeavours to promote their best interest in the court of Great Britain †; they passed a further resolve, as the opinion of the house, that, by comparing the governor's letters with the other letters written from the province to the same person, it was manifest a plan had been formed, &c. : by this resolve insinuating a conspiracy against the country; when, in fact, the governor never knew any thing of the contents of any letters except his own, nor knew that such letters had been written, until he heard of their being returned to America.

And, with still more refined art, two letters from private gentlemen in Rhode Island are brought in, with a resolve, that it has been the misfortune of this government, from the earliest period, to be secretly traduced, and maliciously represented to the British ministry, by persons neither friendly to the colony, nor to the English constitution.

Upon the whole matter thus stated, it was resolved, that the house is bound, in duty to the king and to their constituents, to remonstrate to his ma-

* This caution appears in the last letter, which was written just before governor Bernard's letters had been obtained by the agent of the council, and sent to Boston.

† When some of the governor's friends urged to the persons principally concerned in these, and the like measures, the unwarrantableness of asserting, or insinuating, what they knew to be false and injurious, they justified themselves from the necessity of the thing; the publick interest, the safety of the people, making it absolutely necessary that his weight and influence among them should, by any means whatever, be destroyed.

jeasty

1778 jesty against the conduct of the governor and the lieutenant-governor, and to pray that he would be pleased to remove them for ever from the government of the province ; and an address for that purpose was ordered to be prepared. The extravagance of this proceeding, notwithstanding that, in almost every other measure, a vote could be obtained without opposition, restrained a fourth part of the house, twenty-eight †, in one hundred and eleven members present, declining their assent. One who had taken a very active part, and who was of the committee for preparing the address, as soon as the session was over, made his apology to the governor for what, he owned, would otherwise have been most unjustifiable conduct ; and declared that he was actuated merely by a regard to the governor's personal safety, having observed the minds of the people to be so much inflamed, in the several parts of the province, as to make it absolutely necessary that they should be cooled ; and this way of doing it, by an address for the governor's removal, which he knew could not have its proposed effect, and, when the grounds of it were considered, could not be of any prejudice to his reputation, he judged preferable to any other suddenly to be devised.

Still the letters were kept back from publick view. A distinct, separate proceeding of the council was also judged necessary, and that more particular reference should be had to the exceptionable matter contained in them. After much parade to obtain satisfaction that the letters were genuine, and a very large analysis of the several letters, and an historical account and vindication of the proceedings of council, to which some of the letters referred, in the course of which they charge the governor with misrepre-

* Several of these afterwards, upon a clamour against them, desired to withdraw their votes, and to be counted on the other side, sentations

representations and exaggerations of facts, with a wrong 1773 construction of an act of parliament relating to barracks, and with an unjust censure upon the council for not conforming to the construction which he had made; and after collectively considering his letters, and those of the lieutenant-governor, they came into eight resolves upon the governor's letters; four whereof respected his injurious representations of the proceedings of council,—a fifth, his vindication of the commissioners of the customs,—a sixth, an exaggerated statement of the disorders of the province,—and the other two, his intimating, and strongly recommending, measures of parliament against particular persons, and against the province in general.

Except what was unfairly and fallaciously represented in these resolves, the whole charge brought against the governor was a difference in opinion from the members of a former council. These unfair representations can admit of no excuse.

To bring an odium upon him, for being instrumental in procuring troops to be sent to the province, which they knew would make him peculiarly obnoxious to the people, they confidently asserted that a letter, dated the 10th of August, 1768, representing the need in which the officers of the crown stood of aid and support, did excite to the sending of regiments into the province, though two of the regiments arrived in Boston in September following, and other two, which were sent from Ireland, early in November; so that the orders for the first must have been given before the letter was written, and for the last, before it could be received in England: but it was known that the people would not be at the pains of comparing dates*; and, indeed, there was not a word in the letter intimating the need of

* Such arts are compared to props and scaffolds, in architecture, which support the building until it is brought to perfection, and then are disregarded and cast away.

military

1773 military force, unless to desire that the officers of the crown may not be discountenanced, neglected, and fail of support, can be strained to intimate it.

The only instances given of his exaggerating facts, are his representing an empty barrel, placed upon a beacon, to alarm the people, to be a barrel of tar ; and his asserting that all the authority of government was not strong enough to remove it. To the first part, the council say that the barrel of tar proved to be only an empty nail-barrel ; and to the last, that, though it continued several days during the violence of the agitation, yet that one or two assistants of the sheriff went with him to the beacon, and, in the presence of a " number " of people, took down the barrel ; and there was, therefore, no foundation for saying, that all the authority of government was not strong enough to remove what, they say, was put there for a scare-crow, or, more probably, by some wanton lads, to make themselves diversion. The calling an empty tar-barrel a barrel of tar, could not be with an ill design to misrepresent, because the former cannot be set on fire to serve for a beacon, but the latter is of itself combustible, and, when placed in a skillet, is capable of receiving other combustible matter, and of being made a beacon. And this, as appeared by the oath of the sheriff, was an empty " turpentine " barrel, equally proper ; and, although it was finally removed by two persons employed by the sheriff and well rewarded, in as private a manner as possible, when he and three or four of his deputies, which made what the council call a number of people, were all the persons present, it had remained six or seven days, in defiance of all the authority of government.

In one of the letters, mention is made of the council having met without the governor, and agreeing upon a long address or petition to the parliament, with the opinion of the writer upon the irregularity of
of

of the proceeding; but there is not a word said of the 1773 subject of the petition, nor was it then known to him; yet the charge is artfully made to be an unjust censure of a number of the council, for petitioning parliament for a repeal of the American revenue acts.

But it was still more exceptionable in the council, that when they had recited, in the former part of their report, many parts of one of the letters, from which it was evident that he had been advised of the proceedings in parliament, and, from thence, expressed his opinion that marks of resentment would certainly be shewn against the province in general, or particular persons, adding, "we expect to be in suspense for three or four weeks, and then to hear our fate," they artfully resolve, that he does not appear to have thought that the sending troops indicated a sufficient degree of resentment, and, by his said letter, did manifestly approve, and therein "intimate the propriety" of further marks of resentment, &c. And although, still continuing the subject of the measures before parliament, he goes on, "I never think of the measures necessary for the peace and good order of the colonies without pain: there must be an abridgement of what are called English liberties: I relieve myself by considering, that, in a remove from the state of nature to the most perfect state of government, there must be a great restraint of natural liberty: I doubt whether it is possible to project a system of government, in which a colony, three thousand miles distant, shall enjoy all the liberty of the parent state: I am certain I have never yet seen the projection *;"—the council, not-

* To a candid mind, the substance of the whole paragraph was really no more than this:—"I am sorry the people cannot be gratified with the enjoyment of all that they call English liberties, but, in their sense of them, it is not possible for a colony at three thousand miles distance from the parent state to enjoy them, as they might do, if they had not removed."

withstanding,

1778 withstanding, take out a clause of this paragraph and connect it with a clause of another distinct paragraph, and form their resolve, that the writer gave it as his opinion, that other measures than declaratory acts and resolves were necessary to secure the dependence of the colonies, and that he strongly recommended such measures*, and declared that "there must be an abridgment of what are called English liberties †."

After remarking, that both the governor and the lieutenant-governor had entirely lost the confidence of the people, and are, consequently, become unsuitable instruments for promoting the inseparable interests of the king and his faithful subjects, they finally resolve, as their humble opinion, that if his majesty will be pleased to remove the governor and lieutenant-governor, it will be promotive of his majesty's service, and the good of his loyal and affectionate people of the province.

These resolves being published, the copies of the letters were then suffered to be delivered by the

* The whole paragraph, referring to the measures then before the parliament ran thus:—"I really wish that there may not have been the least degree of severity beyond what is absolutely necessary to maintain, I think I may say to you, the 'dependence' which a colony ought to have upon the parent state; but, if no measure shall have been taken to secure this 'dependence,' or nothing more than some declaratory acts or resolves, it is all over with us: the friends of government will be utterly disheartened, and the friends of anarchy will be afraid of nothing, be it ever so extravagant."

† The house had made no remark upon this expression. They knew the governor had, in more full terms, expressed the same sentiment in his speech at the last session of the assembly. They had brought no charge against him then, for an open declaration in the face of the world. They must make themselves ridiculous to bring a solemn accusation against him for maintaining, in a private letter, a sentiment which he had avowed in a publick speech, and the truth of which they seemed rather to admit than deny; and were willing to draw a consequence from it in favour of their claim to independency...

printers;

printers; but the minds of the people were generally impressed by the addresses both of council and house for the removal of the governor and lieutenant-governor. An attempt from the governor to expose the proceedings either of the council, or house, would have laid him open to redoubled abuse and calumny. He suffered them, therefore, to take their own course, and when they had finished, and he had required copies of their proceedings, he thought it most advisable to treat them with a degree of contempt, and only observed, in a message to the house, that he was concerned for the honour and reputation of the province, and recommended to them, to apply themselves to the necessary business of the province; and a few days after, he put an end to the session. 1773

Not contented with the fallacy, which runs through the whole of the proceedings in the two houses, it was continued in the publication of the letters. The governor, in a message, had said to the house that it had not been the tendency of "them," meaning his own letters, to subvert the constitution. In the title-page of the pamphlet, containing "all the letters of the different persons," they are called "copies of letters sent by, &c., in which, notwithstanding his excellency's declaration to the house that the tendency and design of 'them' was not to subvert the constitution, the judicious reader will discover the fatal source, &c.;" thus leading the readers to conclude that the governor had vindicated all the other letters, as well as his own. Such circumstances, however tedious, seem necessary to give a just idea of the deviations which men are tempted to make from truth and simplicity, in order to effect their purposes.

The address for the removal of the governor and lieutenant-governor was sent to the agent to be presented in England, but no provision was made to support

1773 support the charges against them. It was designed to work its effect in England, from the effect it had in the province. They were to be blackened, and rendered odious to the people, and then to be declared incapable of promoting the king's service; and the success in the province, at first, was great, beyond the most sanguine expectations. Calm, sensible men, however, when the letters came abroad, and they were able to compare them with the resolves, could not help saying, with surprise, "Is this all the cause of such a general and violent agitation through the province?" The recovery of the people from the distemper was very much assisted by the same ingenious writer who had silenced, for a time, the calumniators of governor Bernard, and who, in a series of papers, published weekly under the signature of *Philalethes**, developed the disguised craft and fallacies which pervaded every part of this deep contrivance, with such moderation, candour, and perspicuity, that the contrivers themselves thought it best to leave these pieces unanswered; to suffer the flame to die away, and to rely upon the materials which they kept in reserve, for raising a new flame at the most proper time for their purpose. After they had completed the whole of what was intended respecting the letters, and were apprized of the governor's design to prorogue the assembly, they passed certain resolves, founded upon the information they had received, that the justices of the superior court had taken only one half of the grants made by the assembly; from whence it was inferred, that they had determined to receive their salaries, for the future, from the crown. By one of these resolves, it was declared to be the opinion of the house, that, while the justices of the superior court hold their commissions during pleasure, their accepting of, and

* Mr. Sewall, then attorney-general.

depending

depending upon, the crown for their support, inde- 1773
pendent of the grants and acts of the general assembly, will discover to the world, "that they have not a due sense of the importance of an impartial administration of justice; that they are enemies to the constitution; and have it in their hearts to promote the establishment of an arbitrary government in the province." And, a day or two after, they further resolved, that it is the incumbent duty of the judges, without delay, explicitly to declare whether they are determined to receive the grants of the general assembly, or to accept of their support from the crown; and if they longer delay to let the public know their determination, they will discover that they have little or no regard for the quiet, peace, and welfare of the province, and in such case, it will be the indispensable duty of the commons of this province, to impeach* them before the governor and

* Mr. Adams's attention to the cause in which he was engaged would not suffer him to neglect even small circumstances, which could be made subservient to it. From this attention, in four or five years, a great change had been made in the language of the general assembly. That which used to be called the "court house," or "town house," had acquired the name of the "state house;"—"the house of representatives of Massachusetts Bay," had assumed the name of "his majesty's commons;"—the "debates of the assembly," are styled "parliamentary debates;"—"acts of parliament," "acts of the British parliament;"—"the province laws," "the laws of the land;"—"the charter," a grant from royal grace or favour, is styled the "compact;"—and now "impeach" is used for "complain," and the "house of representatives" are made analogous to the "commons," and the "council" to the "lords," to decide in cases of high crimes and misdemeanours, and, upon the same reason, in cases of high treason. Another instance of the same nature was attempted in this session. The year of the king's reign, and the royal style, had always been prefixed to the laws of the province in latin, as they are to acts of parliament; and in this style the royal authority over the whole dominions is expressed; but in all the bills prepared in the house this session, the prefix was altered from the old form in latin, to these English words, "In the thirteenth year of king George the third." The governor informed the

1773 and council, as men disqualified to hold the important posts they now sustain. The assembly was prorogued the day after this resolve passed.

It soon appeared, that there was no design to prosecute any formal complaint against the governor and lieutenant-governor in England. An address, indeed, was drawn up, in which they are complained of, in general terms, as having, by their conduct, endeavoured to alienate the affections of the king from the province, &c.; but there was not the least mention of the letters. This was soon forwarded to England, and, so early as the 21st of August, was sent to lord Dartmouth in a letter from Dr. Franklin, then in London, and styling himself the agent for the house of representatives. He prays his lordship to present the address to his majesty, the first convenient opportunity; and informs him, that he has the pleasure to hear that the people are sincerely disposed to be on good terms with the mother country; that the assembly had declared their desire, only to be put into the situation they were in before the stamp act, aiming at no novelties; that it is said their resentment against Britain is much abated, by their having lately discovered, as they think, the authors of their grievances to be some of their own people. And he desires leave to say, that this disposition may be cultivated by a

the house, by message, that he would not consent to any alteration in the style, it being something of an unusual and extraordinary nature. They, thereupon, desired the bills again, to restore the old title; but gave him a very disingenuous answer; wondering that he should consider the bills as of an "extraordinary nature, merely because words are in plain English instead of the Roman language;" and, by the body of the people, his refusal, no doubt, was considered to proceed from mere humour. To this inconvenience he was, in many instances, forced to submit, to avoid a greater, by the controversy in which his attempting an explanation would involve him, which, in every answer, would bring fresh abuse.

...

favourable

favourable answer to the address ; which he therefore hoped his goodness would endeavour to obtain. 1773

The compliance with the request seems to have been expected, as if it had been something in course ; and it is certain that there was a great disposition in government, about this time, to gratify the colonies in every thing they desired ; at least, as their desires were then understood, and as Dr. Franklin, in this letter, signifies them ; though no vote, or act, of the assembly, of the purport he mentions in his letter, ever appeared ; and this disposition, undoubtedly, encouraged him to express himself in a style, and with an air, not common upon such occasions. The assembly had expressed themselves in a manner so different, in their answer to the governor's speech to them at opening the session in January the last year, that, when the answer appeared in England, it had been seriously intended to propose in parliament, an act for restraining the inhabitants of Massachusetts Bay from the cod and whale fishery upon any part of the banks of Newfoundland, Nova Scotia, or within the gulf or river of Saint Lawrence, until they should rescind the answer, and cause it to be taken from their files ; but the East India affairs coming on, and taking up much time, it was said that there was not enough remaining to digest this proposal ; and, as had repeatedly been the case before, upon a delay of carrying into effect resolutions formed upon a sudden resentment, when the resentment abated, a disposition to lenient, healing measures took place ; so that the course of the controversy between the parliament and the colonies seems to resemble controversies between natural parents and their children, more than those between parent states and the colonies springing from them. And, as a further step in compliance with the claims and demands of the colonies, it was in contemplation

1773 tion to remove the ships of war from Boston, and to make Halifax the place of rendezvous, as it had been heretofore; of which intention admiral Montagu, then at Boston, had received notice. The governor had also received advice, that his proposal for granting commissions to the judges during good behaviour, and also the abolition of the appellant courts of admiralty, were deemed necessary measures. But the fresh intelligence from Boston again caused a suspension of all lenient measures, and a general inaction for several months succeeded *.

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* As the governor had no apprehensions, that it was intended that the address from the house should be brought to a publick hearing in England, he took no other measures for his defence, than by desiring, that, if any steps should, contrary to expectation, be taken, his friend, Israel Mauduit, esq., would appear for him, and move for time to notify the governor, &c.

When the proceedings of the assembly were made publick in England, they were generally condemned. The secret procuring, and sending to America, of private letters, was said to be infamous. This brought on altercations in the newspapers, and caused Mr. Whately, the brother and executor of the deceased gentleman to whom the letters were written, to declare what he knew concerning them. Mr. Whately recollected, that, after his brother's death, Mr. John Temple desired to see a letter, and a paper enclosed in it, which he had sent from New England to the deceased; and Mr. Temple imagined, that some letters from Mr. Hutchinson and Mr. Oliver, might give light into the object of his inquiry; and that, thereupon, he, Mr. Whately, left with Mr. Temple several bundles of letters from his brother's correspondents in America, in which there were letters from Mr. Hutchinson, and others from Mr. Oliver; but he made no suggestion, that any of them had been taken away by Mr. Temple, and he has since said, that he believed the contrary. A dispute ensued between Mr. Temple and Mr. Whately; and a challenge from the former, which brought on a duel, in which the latter was dangerously wounded. Fourteen days after this duel, a letter appeared in the Publick Advertiser, with Dr. Franklin's signature, declaring that the letters never were in the possession of Mr. Whately, after his brother's death; and that he alone was the person who obtained, and transmitted them to his constituents, and, in the same letter, a very severe censure was passed upon the writers of the letters which he had thus obtained.

This

The trial of a person for piracy committed upon 1773
the high seas properly, though at but a few leagues
distance

This censure appeared to Mr. Mauduit to be very unjust ; and, in behalf of his friends, he preferred a petition to the lords' committee of his majesty's privy council, to whom the petition of the house of representatives had been referred, praying to be heard by counsel. Dr. Franklin considered it "a matter of politicks," and not of law, and did not expect counsel would be employed, and proposed to rest the matter upon the unpopularity of the governor and lieutenant-governor ; but the court having allowed counsel to Mr. Mauduit, Dr. Franklin desired it also. Mr. Mauduit's view was to make the vindication of the characters of his friends as publick as the abuse. Mr. Wedderburne, his majesty's solicitor-general, undertook their defence, generously declining to receive any fee or reward. Mr. Dunning and Mr. John Lee appeared as counsel on the other side ; and the hearing came on, January 29th, 1774. Thirty-five lords of the privy council were present, so large a number not having been known upon any occasion. No speech, since those of Cicero against Anthony, was ever more applauded than Mr. Wedderburne's. The counsel on the other side disclaimed, on behalf of the assembly, any intention of bringing a criminal charge against the governor and lieutenant-governor, and said that the petition was founded solely on the ground of their being obnoxious to the people of the province. The letters were called for by the committee, but, upon attested copies being offered by Dr. Franklin, Mr. Wedderburne consented to receive them, reserving the right of inquiring how the originals were obtained. The lords' committee unanimously reported as their opinion to his majesty, that the petition was founded upon resolutions formed upon false and erroneous allegations, and that it was groundless, vexatious, and scandalous, and calculated only for the seditious purposes of keeping up a spirit of clamour and discontent in the province. And their lordships added, that nothing had been laid before them which did, or could, in their opinion, in any manner, or in any degree, impeach the honour, integrity, or conduct of the governor, or lieutenant-governor ; and they were humbly of opinion, that the petition ought to be dismissed. And his majesty was pleased, with the advice of his privy council, to approve of the report, and to order the petition to be dismissed accordingly.

Thus, after stigmatizing the governor and lieutenant-governor, in the province, destroying the interest they had with the people, and bringing them into danger of popular resentment and rage, the house of representatives, by their agent, declare before the lords' committee, that their petition is founded solely on the
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1778 distance from Boston, deserves to be mentioned ; if for no other reason, for the unparalleled cruelty and inhumanity of the fact ; but there were, besides,

ground of the governor and lieutenant-governor being obnoxious to the people, and refused to support any of the charges which had rendered them obnoxious.

The manner in which these letters were obtained, was never fully discovered. Dr. Franklin asserts, that they were not in Mr. Whately's possession at the time of his death. Mr. Whately's character will not admit of a supposition, that he suffered to be put into the possession of another person, letters written in confidence of not being communicated. They were, therefore, unfairly obtained from Mr. Whately in his life time, and unjustly withheld from his executor, after his death. The removal of Dr. Franklin from office seems to have been occasioned by his publick acknowledgment that he laid hands on them, and sent them to his constituents ; and that of Mr. Temple, by information given to the ministry, by a person intrusted with the secret, that he was privy to the plan of procuring, and sending them over. From some circumstances, there were strong grounds to suppose, that they had been in the possession of another person, a member of parliament, by whom they had been communicated to Dr. Franklin ; but governor Hutchinson, upon information given him, thought it prudent to discourage any further inquiry, which would increase the number, or malevolence, of his avowed enemies. "*Hujus quoque seculi licentissimam vesaniam, cum ob alios furores sæpe sum detestatus, tum ob hanc scelestam petulantiam, quod jam nihil in seris ac scriniis reponi, nihil amicis credi, nihil denique in animi penetralibus versari tutò possit, humanâ improbitate omnia perquirente et eruente, quæ se potissimum in arcanorum scriptorum exploratione nostro tempore occupat et fatigat. Proinde ut primum aliqui nunc offensos se læsosque existimant, non solum eorum à quibus læsi videntur literas ad se missas proferunt, ac palam, id est, typis excusas sexcentis exemplis recitant : sed etiam aliorum, istâ offensione interpositâ, pervestigant, unde suo inimico vel ex unâ literâ odium apud eos qui legant confari possit, 'homines,' ut Cicero inquit, 'et humanitatis expertes, et vitæ communis ignari.'*"—*Erasmii. Epist. lib. 19, epist. 6.*

"Dubitabitis etiam diutius, judices, quin illud quod initio vobis proposui, verissimum sit—aliud per hoc judicium nihil agi, nisi ut, M. Fonteio oppresso testimoniis eorum, quibus multa reipublicæ causâ invitissimis imperata sunt, segniores posthâc ad imperandum ceteri sint, cum videant eos oppugnari, quibus oppressis, populi Romani imperium incolame esse non possit?"—*Cic. pro M. Fonteio.*

circum-

circumstances attending the prosecution and trial, 1773 which shew the prejudices of party in a very strong light.

In the autumn of 1772, the crew of a small fishing schooner, and one passenger in her, sailed from Boston, bound to Chatham, a harbour on the back of Cape Cod. The next morning she was discovered between the harbour and the island of Nantucket, having no body on board but the passenger, who made a signal of distress, and who gave an account, that, after leaving Boston, the vessel was boarded in the evening by a large boat, rowed with twelve oars, which came from an armed schooner lying to at a distance; that the boat's crew had murdered the whole company of the fishing vessel, consisting of three men and a boy, had plundered the vessel, and then left her, with her helm lashed, and her sails standing, and properly trimmed; that the passenger, supposing it to be a boat from one of the king's schooners, and that he should be impressed, had concealed himself, by hanging by his hands over the tafferel, and that, when the boat left the fishing vessel, he returned within board, and, as soon as the large schooner was out of sight, made sail and stood out to sea. There was much blood upon deck, and traces of blood which had run out at the scuppers, and marks of plunder, by broken boxes, stove cask, &c. The fishing vessel being carried into harbour, the passenger was examined by a justice of peace, who gave so much credit to his story as to suffer him to go at large, but thought it necessary to send a copy of his examination to the governor at Boston. Some were ready enough to charge the piracy and murder to a king's schooner, then expected from Rhode Island, and it was suggested that the crew might have risen upon the commander and officers, and have become pirates. The admiral thought fit to send out one of the king's ships to cruise, which re-

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turned

1773 turned in eight or ten days without any discovery. Every part of the passenger's account appeared to the governor incredible, and, as a commissioner for the trial of piracies, &c., he issued a warrant to apprehend him, and bring him to Boston, and, after examination, committed him to prison for trial. A special court of vice-admiralty was soon after held in Boston, at which the prisoner was brought upon trial for the murder of the persons who, as was proved upon the fullest evidence, sailed in the vessel with him from Boston; but the counsel for the prisoner moving for further time, and urging that intelligence might probably be obtained of a pirate schooner having been in the bay, and it appearing that a large armed schooner sailed from Boston, bound to the coast of Guinea, at the same time with the fishing vessel, the court thought proper to adjourn the trial for six months.

Before this time expired, the governor had received from the secretary of state the opinion of the attorney and solicitor-general, taken ten years before, upon the construction of the statute of king William for trial of piracies, &c., in America. And although jurisdiction was given in piracies, robberies, and other "felonies," yet, according to this opinion, murder, being a "felony" of a higher nature than piracy, was not a "felony" intended by the statute. It therefore became necessary to send the prisoner to England for trial there; or to try him in America for the "piracy" only; or, otherwise, to discharge him. It was not practicable to have the evidence in England, necessary to conviction. He was therefore charged with the piracy only; but the advocate-general having set forth, in the libel, the murder of the four persons on board, as perpetrated by him in order to the piratical taking and carrying away of the vessel and goods—the offence for which he was brought upon trial,—four of the eight judges who constituted

constituted the court, were of opinion that the 1773 crimes of murder and piracy were so blended together in the libel, as that, by convicting the prisoner of the one, they must convict him of the other also: the president and three other judges were of a contrary opinion, but not being the majority of the court, the prisoner escaped the punishment due to murder, greatly aggravated by circumstances attending it, three of the persons being near relations of the prisoner, and the other a boy, who seemed to have been killed, only to prevent discovery; the temptation to the act being the obtaining of the money which the crew had received at Boston, for the earnings of their vessel the year preceding.

In common times, where there are violent marks of guilt of so horrid a crime, there is danger of prejudice so strong as not to admit of the weight justly due to circumstances which might tend to favour the person charged with being the perpetrator; but the prejudice arising from civil discord seems to predominate over all other prejudices to which the mind of man is liable.

From the first knowledge of the account given by the prisoner, that the crew of a boat from a large schooner had committed the act, some of the heads of the sons of liberty took part with him, and professed to make no doubt of its being a man of war schooner; and the governor was charged in the publick prints with too critical and severe an examination of the prisoner, whose innocence, it was said, would appear. He was often visited in prison by some of the most active persons in opposition; and the people were taught, that, although pirates had been tried by a special court of admiralty, in this and other colonies, for fourscore years together, they had, nevertheless, been all this time deprived of

1773 of the rights of Englishmen, a trial by jury*, and brought upon trial before a court consisting wholly of crown officers, and many of them employed in the colonies for unconstitutional and oppressive purposes. And there was too great an appearance of a pleasing satisfaction, from the prisoner's having escaped punishment of a murder, which may be ranked among the most atrocious ever committed.

The assembly being prorogued, there was again room to hope for a few months of freedom from civil contention. The complaint against the governor was gone to England; the salaries of the judges were suspended for the consideration of the next session: these were the two subjects of controversy peculiar to Massachusetts colony. Not more than two or three months had passed, before a new subject was brought on, which had its effect in all the colonies, but greater in Massachusetts than in any other.

When the affairs of the East India company were under the consideration of parliament, to facilitate the consumption of tea, a vast quantity whereof then lay in the warehouses, it was determined to export a part of it, on account of the company, to the colonies, there to be sold by factors at a much lower price than it could be afforded by particular merchants who purchased it in England. When the intelligence first came to Boston, it caused no alarm. The threepenny duty had been paid the last two years without any stir, and some of the great friends to liberty had been importers of tea. The body of the people were pleased with the prospect of drinking tea at less expense than ever. The only appa-

* They could not add of the vicinity, when the crime was committed upon the high seas; and the offenders, as commonly had been the case, were not of the colony, nor even English subjects.

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rent discontent was among the importers of tea, as 1773 well those who had been legal importers from England, as others who had illegally imported from Holland; and the complaint was against the East India company for monopolizing a branch of commerce which had been beneficial to a great number of particular merchants. And the first suggestion of a design in the ministry to enlarge the revenue, and to habituate the colonies to parliamentary taxes, was made from England; and opposition to the measure was recommended, with an intimation, that it was expected that the tea would not be suffered to be landed*. The committees of correspondence in the several colonies soon availed themselves of so favourable an opportunity for promoting their great purpose. It soon appeared to be their general determination, that, at all events, the tea should be sent back to England in the ships which brought it. The first motions were at Philadelphia†, where, at a meeting of the people, every man who should be concerned in unlading, receiving, or vending the tea was pronounced an enemy to his country. This was one of the eight resolves passed at the meeting.

The example was soon followed at Boston‡. The people were summoned by notifications posted in different quarters, to meet at the tree of liberty, to hear the resignation of the consignees of the tea, which was then daily expected. The consignees also, by a letter left at one of their houses, were required to attend at the same time at their peril. The people met, but the consignees not appearing, a committee was appointed to acquaint them, at one of their warehouses where they had met, that, as they had neglected to attend, the people thought

* The letters were dated in England the beginning of August, and were received in America the latter end of September and beginning of October.

† October 8th.

‡ November 3rd.

them-

1773 themselves warranted to consider them as their enemies. They treated the message with contempt, and the people, many of whom had followed the committee, forced open the doors of the warehouse, and attempted to enter a room in which the consignees, with some of their friends, were shut up; but meeting with resistance, they soon after dispersed, and the body of the people who remained at the tree, upon the return of their committee, dispersed also. This seems to have been intended only as an intimation to the consignees, of what they had to expect. Two days after, what was called a "legal" meeting of the inhabitants was held in Faneuil hall. Here the resolves which had been passed by the people of Philadelphia were first adopted; and then a further resolve passed, that the inhabitants of the town, by all means in their power, will prevent the sale of the teas exported by the East India company, and that they justly expect no merchant will, on any pretence whatever, import any tea liable to the duty. Committees were also appointed to wait on the several persons to whom the teas were consigned, and in the name of the town, to request them, from a regard to their characters, and to the peace and good order of the town, immediately to resign their trust. Each of the consignees gave an answer of the same import, that, as they were not yet acquainted with the terms upon which the teas were consigned to them, they were not able to give a definitive answer to the request of the town. The answers were all voted to be daringly affrontive to the town, and the meeting was immediately after dissolved.

Three vessels were expected every hour with the teas. The consignees were afraid of exposing themselves and their bondsmen to damages, which might arise from a refusal or neglect to execute their trust; on the other hand, they were anxiously concerned for

for their personal safety, and made their application 1773 to the governor*. He foresaw that this would prove a more difficult affair than any which had preceded it, since he had been in the chair. The controversies with the council and house had a tendency to deprive him of the esteem and favour of the people; but he had not been apprehensive of injury to his person. He was now to encounter with bodies of the people collected together, and a great proportion of them the lowest part of the people, from whom, when there is no power to restrain them, acts of violence are to be expected. He knew that the council would give him no aid. A man of the most influence among them had said to him, that he was of opinion, instead of any attempts to suppress the motions of the people, it was more advisable to recommend to the consignees to reship the tea to England. He had no expectations of being able to protect the persons of the consignees, or the property under their care. He considered, that, if the ships came into the harbour above the castle, they could not pass by it again without a permit under his hand; and that his granting such permit would be more than he should be able to justify. He therefore advised to their anchoring without the castle, and their waiting for orders; and this advice was approved of by the consignees, and by the owner of the ship first expected, if not by the owners of the other ships; and orders were given to the pilots accordingly.

All design of riots and acts of violence had been disclaimed by the conductors of measures for preventing the tea from being landed. A great number of rioters assembled, notwithstanding, before the house of Mr. Clarke, one of the consignees, in the evening, and attempted to force their way in, broke

* The teas were consigned to three different houses, one part to two sons of the governor, another part to Richard Clarke and sons, and a third to Benjamin Faneuil and Joshua Winslow.

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1773 the windows to pieces, and otherwise damaged it, so as to cause the occupiers to remove out of it. One of the consignees fired, with ball, upon the mob, from one of the windows, soon after which the rioters dispersed.

(The next day a town meeting was held in Boston, for the sole purpose of inquiring of the consignees whether they were prepared to give a definitive answer to the request of the town. They informed the town, that they had received advice from their friends in England, of such engagements in their behalf, merely of a commercial nature, as put it out of their power to comply with the request of the town. Immediately upon receiving this answer, the meeting dissolved itself. This sudden dissolution struck more terror into the consignees than the most minatory resolves. The same evening, by the advice of some of their friends, they resolved to petition the governor and council to take under the protection of government the property of the East India company, which they were willing to resign, in order to its being landed and secured, until further direction from the owners. This measure was charged to the governor, who knew nothing of it, until he came to town from his house in the country, the next morning, to attend a council summoned upon the general state of the province; nor had he any expectation of success from it.

Y The governor laid before the council the distracted state of the province from the measures of the inhabitants of Boston, who were in possession of the powers of government, and required advice and assistance, in order to the recovery of them. He acquainted them with the attack upon the house of one of the consignees, their dread of further violence upon the arrival of the tea, which was expected every hour; that he had called upon the civil magistrates, and had directed a military company of the inhabitants

tants to hold themselves in readiness to obey their 1773 orders, in suppressing all riotous assemblies of the people; but all had been to no purpose. One of the council observed, that the last riot was not of the most enormous kind,—that in Sir Robert Walpole's time, mobs had been frequent in England. Government there was then forced to give up the excise, and Sir Robert had promised never to bring it on again,—the people would not bear the cider act;—and the disorders among the people here were caused by unconstitutional acts of parliament. Another observed, that sending the tea by the East India company to America was the plan of the ministry, in order to raise a revenue; that he dreaded the consequences, and was of opinion, that the only way to prevent them was by the consignees resigning their trust. X

Whilst this debate was going on, the consignees delivered their petition to the secretary, some parts whereof, after it had been read, they were called in to explain; and having signified that they were in danger of violence to their persons, and that they feared the destruction of the tea, if there should be any attempt to land it, they prayed for protection to both; promising to wait for further directions from the East India company, and, in the mean time, to take no steps towards the sale of the tea, without permission from the governor and council. When they had withdrawn, the gentleman who had proposed their resigning, explained himself, not intending a resignation into the hands of the governor and council; and exception was taken to their having any concern with the tea, lest they should make themselves liable to answer for any damage which might happen to it. But, some of the council desiring an adjournment, the matter was continued from Friday until Tuesday following; and there being then but a bare quorum present, it was moved that the the

1773 the governor should make a further adjournment, to which he consented ; and the select men of Boston having been first sent for, it was recommended to them to use their endeavours to preserve the peace of the town ; and they expressed their opinions, that while the affair was under the consideration of the governor and council, the people would remain quiet.

Several members appeared upon this adjournment, who had not been present before. Mr. Bowdoin acquainted the governor, that he had reduced his thoughts to writing, which he begged leave to read, and to lay the paper on the table. To this the governor excepted, as irregular, and as it would make an ill precedent. After much debate, and after the council had, in general, discovered a disinclination to any other act, or advice, than a formal call upon the peace officers to be vigilant, which had been often done, and as often met with contempt, a motion was made, that as the opinion of the council was evident, a committee might be appointed to reduce it to a proper form. There was no room to doubt, that the design was to prepare something for the publick, rather than for the sake of propriety in the council records, and the governor doubted whether he ought to consent ; but finding his instructions countenanced such a proceeding, he suffered the appointment of a committee, which withdrew into the lobby, where they had not remained long enough to write a paper of one half the length of their report, before they returned with it in form. There was no room to doubt of its being the paper intended to be read by Mr. Bowdoin, with such preface, or other addition, as was proper for the report of a committee. Upon hearing it read, the governor immediately warned them of the consequences of it ; that it would be highly resented in England, and would be urged there, to shew the necessity

necessity of a change in their constitution. He 1773 pointed out one very exceptionable part, which struck many of them so forcibly, that they wished the governor would give them more time for consideration; to which desire he readily acceded, and ordered an adjournment from Saturday to Monday following.

On Sunday one of the ships with the tea arrived, and anchored below the castle. Notification, in a form* proper to inflame the people, was posted up, calling upon them to assemble; and while the governor and council were sitting on the Monday in the council chamber, and known to be consulting upon means for preserving the peace of the town, several thousands, inhabitants of Boston and other towns, were assembled in a publick meeting-house at a small distance, in direct opposition and defiance. The council, when they had considered the exception which the governor had made, ordered a recommitment of the report, but it was returned without any material alteration; all advice to secure the tea, upon its being landed, being expressly refused, because such advice would be a measure for procuring payment of the duty. Three or four of the council, in the debate, appeared to disapprove of the report, but, when the question was put, it passed unanimously; and the last and senior councillor, though he had argued very strongly against it, gave his voice for it, adding, that it would not do for him to be alone. The council advised the governor's call-

* "Friends! brethren! countrymen!—That worst of plagues, the detested tea, shipped for this port by the East India company, is now arrived in this harbour—the hour of destruction, or manly opposition to the machinations of tyranny stare you in the face. Every friend to his country, to himself, and posterity, is now called upon to meet at Faneuil hall, at nine o'clock *this day*, at which time the bells will ring, to make an united and successful resistance to this last, worst, and most destructive measure of administration."

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1773 ing upon the magistrates to meet, and to take necessary care for the preservation of the peace; which advice being complied with, the people, in a few hours after, passed a vote, which they caused to be printed, declaring that "the conduct of governor Hutchinson, in requiring the justices of peace in the town to meet, and use their endeavours to suppress routs, riots, &c., carried a designed reflection upon the people there met together, and was solely calculated to serve the views of administration." The council, declining any further advice, were dismissed; the people continued together, in possession of all the power of government, for any purpose they thought fit.

The consignees of the tea, when they saw no prospect of protection from government, made proposals to Mr. Adams, and others, a standing committee of the town, for securing the tea, and forbearing to make sale of any part of it, until they could receive directions from their principals; but no proposals were hearkened to; and, as soon as the master of the ship which brought the tea, came on shore, he was sent for by this committee; and after examination, both the master and owner were required, at their peril, to cause the ship to be brought up to town, and to a particular wharf, where it had not been customary for ships from London to unlade*. The consignees of the tea, judging themselves no longer in a place of safety, withdrew to the castle.

The people assembled in Boston took the name

* Had the same method been taken, which was afterwards taken at Philadelphia and New York, and the ship been ordered back to London without entering at the custom-house, the difficulty to which the governor was subjected, by refusing his permit, would have been avoided; but the greatest part of the goods, for the supply of New England that winter, was on board the ship arrived, and the other ships expected; and the merchants would never have submitted to the disappointment and loss.

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of "the body," instead of a "legal town meeting;" 1773 and began with that spirit with which all established powers ought to act in the exercise of their legal constitutional authority. They resolved, that, "at all events," the tea arrived in captain Hall should be returned to the place from whence it came, and that no duty should be paid upon it. They then adjourned to the afternoon, to give time for the consignees to deliberate. As soon as they re-assembled, they resolved that the tea should be sent back in the same bottom in which it came. To this resolve the owner of the vessel, who was present in the meeting, said he must enter a protest. It was thereupon resolved, that Mr. Rotch, the owner, be directed not to enter the tea; and captain Hall, the master, not to suffer any of it to be landed, at their peril. They did not stop at mere declaratory acts, or naked resolves. This they knew would render future acts and resolves contemptible. They established a watch of twenty-five inhabitants, for securing the ship and cargo, and appointed a captain for the night.

It being intimated that the consignees, if they had time, would make their proposals to the body; "out of great tenderness to them, and from a strong desire to bring this matter to a conclusion, notwithstanding the time they had hitherto expended on them, to no purpose," the meeting was prevailed with to adjourn to the next morning.

The governor, seeing the powers of government thus taken out of the hands of the legally established authority, could not justify a total silence, though he knew he could say nothing which would check the usurpers. He sent the sheriff, with a proclamation, to be read in the meeting, bearing testimony against it as an unlawful assembly, and requiring the moderator and the people present forthwith to separate at their peril. The sheriff desired leave to read the directions

1773 directions he had received from the governor, which was granted; but the reading of the proclamation was opposed, until Mr. Adams signified his acquiescence. Being read, a general hiss followed, and then a question, whether they would surcease all further proceedings, as the governor required, which was determined in the negative, *nemine contradicente*.

The consignees, in a letter to the select men of Boston, which was read to the meeting, signified, that it was utterly out of their power to send the tea back to England, but they would engage to keep it in a store until they could receive further directions from England; to which they afterwards added, that they would be content to have it under the constant inspection of a committee, to be appointed by the town. But all was declared not in the least degree satisfactory, and that nothing short of sending back the tea would be so. The owner and master of the ship were directed to attend the "body;" and a vote passed, while they were present, without a negative, "that it is the firm resolution of the body that the owner shall return the tea in the same vessel in which it came, and that they now require it of him." The owner promised to comply, but intimated that it was by compulsion, and that he should be obliged to protest, to save himself from damage. The master also promised to carry it back. The factors for the two other vessels expected were sent for, and, being informed of the engagements made by the owner and master of the ship arrived, they also made such engagements as were satisfactory; and, after making provision for the continuance of a watch, so long as the tea continued in the harbour, and for an alarm to the inhabitants upon any molestation, they passed a resolve, "that if any person, or persons, shall hereafter import tea from Great Britain, or if any master, or masters, of any vessel,
or

or vessels, in Great Britain, shall take the same on board to be imported to this place, until the unrighteous act (*mentioned in the preamble to the resolve*) shall be repealed, he, or they, shall be deemed, by this body, an enemy to his country; and we will prevent the landing and sale of the same, and the payment of any duty thereon, and will effect the return thereof to the place from whence it shall come." Copies of this resolve were ordered to be sent to England, and to the sea-port towns in the province. 1773

A resolve passed, to carry the votes and resolves into execution, at the risk of their lives and properties; and the meeting was dissolved.

A more determined spirit was conspicuous in this body than in any of the former assemblies of the people. It was composed of the lowest as well, and probably in as great proportion, as of the superior ranks and orders, and all had an equal voice. No eccentric or irregular motions, however, were suffered to take place. All seemed to have been the plan of but few, it may be, of a single person. The "form" of a town meeting was assumed, the select men of Boston, town clerk, &c., taking their usual places; but the inhabitants of any other towns being admitted, it could not assume the name of a "legal" meeting of any town.

Immediately after the dissolution of this body, the committees of correspondence of the towns of Boston, Roxbury, Dorchester, Brookline, and Cambridge, united, and held their meetings daily, or by short adjournments, in Faneuil hall, or one of the rooms belonging to it, and gave such directions as they thought proper. Two of the other vessels with tea arriving from London, they were ordered by this new body to the same wharf where the first ship lay, under pretence of the conveniency of having the

1773 whole under one guard. It soon after appeared that a further conveniency accompanied it*.

As a permit, or pass, was always required at the castle, for all vessels except small coasters, and there were several men of war in the harbour, which it was supposed would stop the ship from proceeding any other way, the destruction of the tea was considered as necessary to prevent payment of the duty. A demand was made from the collector, in form, of a clearance for the ship, which he could not grant until the goods which were imported, and regularly entered, were landed, and the duties paid, or secured; and the like demand of a permit was made of the naval officer, with whom blank permits were intrusted by the governor, to be filled up, and delivered to such vessels only as had been cleared at the custom-house, and therefore, in this case, was refused. It was expected, that, in twenty days after the arrival of the tea, a demand of the duty would be made by

* Two days after the dissolution of the body, the following publication was posted in different parts of the town, and printed in the newspapers. It might be the act of a single person unknown, but, in such a time, it carried terror with it, which probably was the principal design of it. "Whereas it has been reported, that a permit will be given, by the custom-house, for landing the tea now on board a vessel lying in this harbour, commanded by captain Hall: This is to remind the publick, that it was solemnly voted, by the body of the people of this and the neighbouring towns, assembled at the Old South Meeting-house, on Tuesday, the 30th of November, that the said tea never should be landed in this province, or pay one farthing of duty. And, as the aiding, or assisting, in procuring, or granting, any such permit for landing the said tea, or any other tea so circumstanced, or in offering any permit, when obtained, to the master or commander of the said ship, or any other ship in the same situation, must betray 'an inhuman thirst for blood,' and will also, in a great measure, accelerate confusion and civil war; this is to assure such publick enemies of this country, that they will be considered and treated as wretches unworthy to live, and will be made the first victims of our resentment.

"The People."
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the collector, and the ship or goods be seized ; which 1773 would occasion additional difficulties. Another meeting of the body was, therefore, called, in order to inquire the reason of the delay in sending the ship back to England. The people came into Boston from the adjacent towns within twenty miles, from some, more, from others, less, as they were affected ; and, as soon as they were assembled *, enjoined the owner of the ship, at his peril, to demand of the collector of the customs a clearance for the ship, and appointed ten of their number a committee to accompany him ; and adjourned for two days to receive the report. Being re-assembled and informed by the owner, that a clearance was refused, he was then enjoined immediately to apply to the governor for a pass by the castle. He made an apology to the governor, for coming upon such an errand, having been compelled to it ; and received an answer, that no pass ever had been, or lawfully could be, given to any vessel which had not first been cleared at the custom-house, and that, upon his producing a clearance, such pass would immediately be given by the naval officer. The governor inquired of him, whether he did not apprehend his ship in danger from the people, and offered him a letter to admiral Montagu, desiring him to afford all necessary protection. He said he had been advised to remove his vessel under the stern of the admiral's ship, but, among other reasons for not doing it, mentioned his fears of the rage of the people ; that his concern was not for his ship, which he did not believe was in danger, but he could not tell what would be the fate of the tea on board. He declined taking any letter to the admiral, and returned to the people. The governor was unable to judge what would be the next step. The secretary had informed him, that a principal

* December 14th, 1773.

1773 leader of the people had declared, in the hearing of the deputy secretary, that, if the governor should refuse a pass, he would demand it himself, at the head of one hundred and fifty men, &c. ; and he was not without apprehensions of a further application. But he was relieved from his suspense, the same evening, by intelligence from town of the total destruction of the tea.

It was not expected that the governor would comply with the demand ; and, before it was possible for the owner of the ship to return from the country with an answer, about fifty men had prepared themselves, and passed by the house where the people were assembled, to the wharf where the vessels lay, being covered with blankets, and making the appearance of Indians. The body of the people remained until they had received the governor's answer ; and then, after it had been observed to them, that, every thing else in their power having been done, it now remained to proceed in the only way left, and that, the owner of the ship having behaved like a man of honour, no injury ought to be offered to his person, or property, the meeting was declared to be dissolved, and the body of the people repaired to the wharf, and surrounded the immediate actors, as a guard and security, until they had finished their work. In two or three hours, they hoisted out of the holds of the ships, three hundred and forty-two chests of tea, and emptied them into the sea. The governor was unjustly censured by many people in the province, and much abused by the pamphlet and newspaper writers in England, for refusing his pass, which, it was said, would have saved the property thus destroyed ; but he would have been justly censured, if he had granted it. He was bound, as all the king's governors were, by oath, faithfully to observe the acts of trade, and to do his endeavour that the statute of king William, which establishes

establishes a custom-house, and is particularly mentioned in the oath, be carried into execution. His granting a pass to a vessel which had not cleared at the custom-house, would have been a direct violation of his oath, by making himself an accessory in the breach of those laws which he had sworn to observe. It was out of his power to have prevented this mischief, without the most imminent hazard of much greater mischief. The tea could have been secured in the town in no other way than by landing marines from the men of war, or bringing to town the regiment which was at the castle, to remove the guards from the ships, and to take their places. This would have brought on a greater convulsion than there was any danger of in 1770, and it would not have been possible, when two regiments were forced out of town, for so small a body of troops to have kept possession of the place. Such a measure the governor had no reason to suppose would have been approved of in England. He was not sure of support from any one person in authority. The house of representatives openly avowed principles which implied complete independency. The council, appointed by charter to be assisting to him, declared against any advice from which might be inferred an acknowledgment of the authority of parliament in imposing taxes. 1773

The superior judges were intimidated from acting upon their own judgments, by the censure of the house of representatives, and by the threats of impeachment of all who shall receive their salaries under the authority of an act of parliament, which had enabled the king to grant them.

There was not a justice of peace, sheriff, constable, or peace officer in the province, who would venture to take cognizance of any breach of law, against the general bent of the people.

The military authority, which, by charter, was given

1778 given to the governor, had been assumed by this body of the people, who appointed guards and officers, which appeared sometimes with fire-arms, though generally without them. And when he required the colonel of the regiment of militia in the town, to use the powers with which by law he was intrusted, he excused himself, by urging the hazard to which he should be exposed, and the inefficacy of any attempt.

2 Even the declarations of the governor against the unlawful invasions of the people upon the authority of government, were charged against him as officious, unnecessary acts, and were made to serve to inflame the people and increase disorders. He considered the intimations given him of personal danger, as part of the general plan for discouraging him from persevering in his duty; but, in some instances of a serious appearance, he could not take any measures for his security, without the charge of needless precaution, in order to bring an odium against the people, when they meant him no harm.

Notwithstanding the forlorn state he was in, he thought it necessary to keep up some shew of authority, and caused a council to be summoned to meet at Boston, the day after the destruction of the tea, and went to town himself to be present at it; but a quorum did not attend. The people had not fully recovered from the state of mind which they were in the preceding night. Great pains had been taken to persuade them, that the obstructions they had met with, which finally brought on the loss of the tea, were owing to his influence; and, being urged to it by his friends, he left the town, and lodged that night at the castle, under pretence of a visit to his sons, who were confined there with the other consignees of the tea. Failing in an attempt for a council the next day at Milton, he met them, three days after, at Cambridge;

bridge; where they were much divided in their 1778 opinion. One of them declared against any step whatever. The people, he said, had taken the powers of government into their hands—any attempt to restrain them would only enrage them, and render them more desperate; while another observed, that, having done every thing else in their power to prevent the tea from being landed, and all to no purpose, they had been driven to the necessity of destroying it, as a less evil than submission to the duty. So many of the actors and abettors were universally known, that a proclamation, with a reward for discovery, would have been ridiculed. The attorney-general, therefore, was ordered to lay the matter before the grand jury, who, there was no room to expect, would ever find a bill for what they did not consider as an offence.

This was the boldest stroke which had yet been struck in America. The people in all parts of the province shewed more or less concern at the expected consequences. They were, however, at a distance; something might intervene to divert them. Besides, the thing was done: there was no way of nullifying it. Their leaders feared no consequences. To engage the people in some desperate measure had long been their plan. They never discovered more concern than when the people were quiet upon the repeal of an act of parliament, or upon concessions made, or assurances given; and never more satisfaction, than when government had taken any new measures, or appeared to be inclined to them, tending, or which might be improved, to irritate and disturb the people. They had nothing to fear for themselves. They had gone too far to recede. If the colonies were subject to the supreme authority and laws of Great Britain, their offences, long since, had been of the highest nature. Their all depended upon attaining to the object which first engaged them.

1773 them. There was no way of attaining to it, but by involving the body of the people in the same circumstances they were in themselves. And it is certain, that, ever after this time, an opinion was easily instilled, and was continually increasing, that the body of the people had also gone too far to recede, and that an open and general revolt must be the consequence; and it was not long before actual preparations were visibly making for it in most parts of the province.

The assembly stood prorogued to about five weeks from this riot. No advantage could be expected from its sitting. On the contrary, the affairs which had been referred over to this expected session, would, in all probability, greatly increase the disorders; but the temper in which the people then were, would not admit of a prorogation until intelligence could be obtained from England of the disposition of government. Such a measure would have caused a general tumult and distraction through the province.

Before the assembly met, a vessel with the remainder of the tea intended for Boston, was driven ashore on Cape Cod; but, the cargo being saved, about fifty chests of tea, by order of the consignees, were put on board a small vessel, and sent to Boston, to be landed at the castle, where the governor gave orders for its reception*. Another vessel had also arrived from London, with twenty-eight chests of tea on account of the merchants. The owners of the vessel were friends to liberty, and caused her to be carried to the same wharf where the other tea ships had lain; and, the first night after her arrival, the tea was taken out by people disguised, and

* He would have given the like orders for the other teas, but the consignees did not dare to apply for them, nor would the owners of the ships venture to land them there.

thrown

thrown into the sea ; and the vessel hauled the next 1774 day to the wharf where vessels from London usually unlade, to take out the rest of her lading*.

To avoid an undesirable answer, the governor took no notice of any of these transactions in the town of Boston, in his speech to the assembly ; and

* The other three ports to which the East India company's tea was shipped, were Charlestown, in South Carolina, Philadelphia, and New York. The first was so remote, that the plan could not be fully concerted between that and all the other places, before the tea arrived there. It was, therefore, suffered to be landed under the care of the custom-house officers in the fort ; the people being quieted with a promise made them, that it should not be sold.

Expresses were sent from Boston by the committee of correspondence, both to Philadelphia and New York, immediately after the destruction of the tea. The express to Philadelphia arrived a little before the ship with the tea, which was not suffered to come within four miles of the town ; but the master, being brought before a vast body of the people, engaged to comply with their requisitions, and went back, with his ship and cargo, immediately to London.

At New York, there was at first the appearance of landing the tea. The governor had applied to admiral Montagu for a man of war, to be sent to New York, as the council had advised, to take the ship with her lading into protection upon her arrival at Sandy-hook, and to bring her under the command of the fort, in order to land the tea in the barracks ; and he had written to governor Hutchinson, acquainting him, that he was resolved to protect the persons and properties of the king's subjects. The ship was blown off the coast, by violent contrary winds, to the West Indies. Upon news of the motions of the people in Boston, they of New York assembled, and came to resolves, not to suffer the tea to be landed, and obliged the consignees to resign their trust. The governor sent by the mayor a message to the people, and engaged, upon his honour, that the tea should not be sold, but remain in the barracks until the council advised to the delivery of it, or orders were received from England how to dispose of it ; and that it should be delivered out in an open manner at noon day : and the mayor having asked if the proposals were satisfactory, there was a general cry, " No ! No ! " The people were kept quiet, with assurances that the ship would be sent back. The governor had left the province, and was gone to England before the tea arrived, and no opposition was made to her being ordered back, in like manner as the ship had been ordered from Philadelphia.

mentioned

1774 mentioned such things only, as were least likely to give room for any harsh or unkind return.

It soon appeared, that the salaries of the justices of the superior court would, without any other subject, be sufficient employ for a session of ordinary length.

They had agreed to give no separate answers to any demands of the assembly, but to consult together in order to a joint answer, or answers of the same tenor. But, in the recess, one of them, of weak nerves and a timid spirit, had been persuaded to receive the whole salary granted by the assembly, and in a letter to the speaker, the first day of the session, to acquaint him with it, and to add, that in compliance with the resolve of the honourable house of representatives, he was determined still to receive the grants of the general assembly for his services, without receiving the grant from the crown. The chief justice, when he was informed that one of the court had received the salary granted by the assembly, determined to put it out of his own power to comply with the demands of the assembly, and received the full salary which had been granted by the crown. The house resolved, that the letter from Mr. Trowbridge, one of the justices of the superior court, was a full compliance with the former resolutions of the house, and satisfactory; and the next day they passed a resolve, that unless the other justices shall, within eight days, inform the house whether they have received in full the grants made by the assembly last year, and shall also explicitly declare that, for the future, according to invariable usage, they will accept the grants of the general assembly, without accepting any grant from the crown for the same services, the house will then have further proceedings on their conduct.

Ten years before this time, the judges would have excused themselves from giving an answer to such

such a demand; but the house of representatives 1774 was become more powerful, and all authority in government, to support the judges in their refusal, was annulled.

Three of the justices gave such answers to the house, as, after an explanation by one of them, they voted to be satisfactory. The chief justice stood alone. In his answer, he set forth, that he had been a justice of the superior court seventeen years; that his salary had been insufficient for his support; that he had thrown himself on former assemblies, for his redress, which he could not obtain; that his estate being much impaired by neglect of attendance upon his private business, he had repeatedly intended to resign his office, but had been dissuaded by respectable members of the assembly, who encouraged him to hope for a better support; that, when his majesty, in his great goodness, granted him a salary, as he had done to others in the like station in other colonies, he thought himself bound to receive it for the time which is past, and he should not dare to refuse it for the time to come. This answer produced a remonstrance from the house to the governor and council; in which, after stating the facts, they declared, that by such conduct the chief justice "had perversely and corruptly done that which hath an obvious and direct tendency to the perversion of law and justice; that he had thereby proved himself an enemy to the constitution of the province, and placed himself under an undue bias, detached himself totally from his connections with the people, and lost their confidence; and rendered himself altogether disqualified any longer to hold and act in the office of a justice of the superior court;" and they therefore pray that he may be forthwith removed.

They soon after passed a resolve, that, it being altogether improper for the chief justice to sit and
act

1774 act while the remonstrance was pending, although an order for his removal had not "actually" been passed, the superior court, which by law was to be held on the morrow, the 15th of February, be therefore adjourned to, and held on, the 17th; and they sent the resolve to the council for concurrence; but the governor not thinking fit to consent to it, the court met as usual; but the chief justice was advised by his friends not to be present, lest he should meet with insult from the populace. The grand jury refused to act, and the court thought proper to adjourn to a distant day.

The governor, upon the secretary's delivering to him the remonstrance, did not think fit to communicate it to the council, but, in a message to the house, observed to them, that they had improperly addressed their remonstrance to him and to the council, as one body, when, by the constitution, the governor is an integral part, and the council are to advise and assist only, except in two cases, which he mentioned; and he added, that if he should comply with their request, or take any step in order to the removal of the chief justice, merely for receiving a salary granted by the king, it would be such a breach of trust, that he should be afraid of some mark of the royal displeasure.

The house did not incline, in direct terms, to desire the council to take cognizance of their remonstrance; but in a message, they recited what had passed between the governor and the house, and prayed the council to "advise," and act, as in their wisdom they thought proper.

The council was at a loss what step to take. The house, to give more solemnity to the proceeding, came up to the council chamber in a body, and presented an additional petition to the governor, when he was in the chair, after it had been read by the speaker. In this they set forth, that the principal
end

end of instituting the council is, to be advising and assisting to the governor in ordering and directing the affairs of the province, and, as the governor's determining, by himself, upon so important an affair, would be a violation of the charter, they therefore prayed him to take the advice of council thereon. 1774

Though the whole message was mere sophistry, the governor thought it best to avoid charging the house with it, and, in his answer, which he delivered with the same formality as they did their petition, by directing the whole house to attend him in the council-chamber, he took notice, that they had passed over those parts of the charter which authorized the governor to use his discretion in assembling the council at such times as are most proper, and, when assembled, to take their advice, or to reject it. He further observed, that a petition might be offered to him, to do such an act, by advice of council, as would render him culpable if he should assemble the council, and lay it before them for their advice, and, in such a case, the charter surely intended that he should use his discretion, and not assemble the council; that the fallacy of their reasoning lay in supposing him to have done, by himself, an act which the governor had not by charter authority to do, without the advice of council, when he had only made use of the power given him by charter, in declining to assemble the council, in order to ask their advice upon a point which ought not to be brought into debate.

They made no reply to this answer, but, as soon as they returned to their chamber, resolved to impeach Peter Oliver, esq., chief justice of the superior court, of certain high crimes and misdemeanours, and ordered their committee to prepare the impeachment. The only attempt of this kind, which I have ever heard of in any of the colonies, was by the house of representatives in Dudley's administration;

1774 tion; which they soon desisted from, and, by an act of the legislature, inflicted pains and penalties; but even this was judged in England to be irregular, the crimes mentioned in the act not being cognizable by the general assembly, such proceedings being proper only in the courts of law; and, therefore, the act was disallowed.

A committee upon this occasion, notwithstanding, was appointed to carry up the articles to the governor and council, and, in the name of the house, and the good people of the province, to impeach the chief justice, &c., in much the same form of words as is made use of by the house of commons. Notice was given to the governor by the house; and he was desired, by being in the chair, to give them an opportunity of laying the articles of impeachment before him and the council. He signified to the house, in a message, that he knew of no crimes, nor misdemeanours, nor any offences whatever, which were not cognizable before some judicatory or other, in the province; but he knew of no criminal case, of which the governor and council, as a court of judicature, could take cognizance; and, if he should assume a jurisdiction without lawful authority, he should make himself liable to answer for an offence, before a judicature whose authority would be indisputable*.

Without taking any notice of this message, they resolved to proceed. Mr. Adams, chairman of the committee, addressed the council in this form:—"May it please your excellency, and the honourable council." Mr. Bowdoin, one of the council, no doubt by concert, observed to him that the governor was not in council. This gave opportunity for an answer. The governor is "presumed" to be present. This was certainly a very idle presumption. It gave pretence, however, for Mr. Adams to report to the

* The king's court in Westminster hall; vide page 262.

house,

house, and, being the clerk of the house, afterwards 1774 to enter upon the journals, that the committee had impeached the chief justice before the governor and council, and prayed that they would assign a time for hearing and determining thereon.

The council were ready to take upon them their part in the scene ; and, by their committee, informed the governor of the impeachment and desired that he would appoint a time to be present and to proceed upon the trial. Until now they had kept out of sight. The governor put them in mind of the reasons he had given to the house, of which they could not be ignorant *, against this impeachment ; and added, that they had, nevertheless, desired him to appoint a time to take cognizance of it, as if it had been a matter of course ; it was therefore necessary for him to observe to them, that in two cases only, which they well knew to be those of divorce, and appeals from inferior judges of the courts of probate, both which were of a civil nature, the governor and council had the powers of a court of judicature, and that in these the governor, though always a necessary, yet was not an integral part ; but in all other cases, said to be acts of the governor and council, they were properly acts of the governor, which he was authorized to do with the advice and assistance of the council, for the charter had given to him only the power of assembling the council, whenever he thought proper for that purpose, and the council could not lawfully assemble as a council by any other authority, nor by their own consent or agreement. Their assembling, or not assembling, being thus left to his discretion, it could not reasonably be supposed that he would cause them to be assem-

* It was the practice for the secretary, from mere respect to the council, to read to them all messages from the governor before they were read to the house, even in those cases wherein the council had not been consulted, and had no immediate concern.

bled,

1774 bled, in order to lay before them any matter or thing in direct repugnance to the authority of the king and of the parliament. It could, besides, be to no purpose, because he should not dare to act, if the council should advise him to it. That the council had a right to meet, of course, upon every matter cognizable by the governor, with assistance of the council, he was determined not to admit.

The house, to avoid the governor's exceptions to his acting with the council as a court of judicature, instituted a new process, and, after exhibiting articles in the same words, they altered the conclusion only, and, instead of praying the governor and council, as in the former, "that such proceedings, examinations, trials, and judgments, may be had thereon as are agreeable to law and justice," they pray, that, "if he be found guilty, he may, by the governor and council, be forthwith removed from his office, and some other person, more worthy, be appointed in his stead." Both these, like two counts in a writ, lay before the council at the same time, that, if one should fail, the other might serve the purpose. Besides the charge of receiving a salary from the king, he was charged in both, with saying, in his answer to the house, that the salary granted him by the assembly had not been adequate to his support; which they declare to be ungratefully, falsely, and maliciously * labouring to lay imputation and scandal upon his majesty's government in the province. This alone, it was said by the members both of council and house, was sufficient to remove him, and might ease the governor of the difficulty of removing him for taking a salary from the king.

* The chief justice had never received more than two hundred pounds for a year's salary, but this year they advanced the salary to three hundred pounds. Surely it must be because two hundred pounds were not adequate; and yet they charge the chief justice with falsehood and malice for saying it was not adequate.

The

The governor might very well have justified the 1774 putting a stop to the proceedings of the house, by a prorogation, upon their first vote or resolve upon the subject of the judges' salaries. To prepare them for it, he acquainted them, by a message, that he had obtained his majesty's leave to go to England *, and intended to avail himself of it, and that he should soon put an end to the session, that he might prepare for his voyage, and he recommended the despatch of the "necessary" business of the province.

The council and the house continued to apply themselves to obtaining the removal of the chief justice, as the most "necessary" business before them. The latter suppose there must of necessity be a power in the government of removing officers who are guilty of high crimes and misdemeanours, and that this power, in the Massachusetts constitution, is in the governor and council; and, as, in order to a determination, they will, and ought to, "inquire" into the charge, the governor with the council do, from the nature and necessity of the thing, make one court, or justiciary body; for the "inquiring" and "determining" involves in it a judicial act, which constitutes a court. The rest of a very long message was framed principally for introducing several fleers, marked by inverted commas, at parts of the governor's speeches at former sessions, and at an expression in one of his letters which had

* The unfair manner in which his private letters had been obtained, and the more unfair construction put upon them by council and house, and the arts used, by particular persons, to incense a people against him, whose favour he had enjoyed for many years, brought him into an ill state of health, from the concern upon his mind. This induced him to apply for his majesty's leave, intending to make use of it, if the dark prospect continued. The order was transmitted by the first opportunity, and he was left at his liberty to make use of it, or not, as he thought proper.

2 G

been

1774 been before the house; and it concluded with saying, that if, when they complain, they cannot even be heard, they yet have the pleasure of contemplating, that posterity, for whom they are struggling, will do them justice, by abhorring the memory of those men who owe their greatness to their country's ruin. It will be difficult to meet with stronger marks of envy, malignity, and a revengeful spirit, than appear in this composition,

The council are still more ingenious in their reasoning. They complain, that when a copy of a remonstrance, which had been addressed to the governor and council, was laid before him, he had given an answer without communicating it to the council; and ask whether this is not an infringement on the rights of the council; and assure the governor, that, if he had communicated it, they would have done nothing inconsistent with their duty to the king.

The appointment of persons to office they admit to be by the governor, the council advising and consenting. But they add, that, after being thus appointed, a property is acquired in an office, and no person can be deprived of his property, but by a judicial act; and the power which removes must therefore be considered, and in fact be, a court of justice; and it is essential to a court of justice, that no one member of it should be an integral part. The governor, with the advice and consent of the council, having, by charter, the power of appointing officers, he is then considered as an integral part; but the power of removing is derived from a particular clause in the charter. "The governor with the assistants or councillors, or seven of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of our said province." Thus, they add, the governor

governor and council are here blended, and, together, 1774 constitute a council, not as two parts, one having a negative on the other, but jointly*.

And, as there stands in the way of this new construction, a clause in the charter, which says, that, in the framing and passing of all orders, laws, statutes, and ordinances, and in all elections, and acts of government whatever—by the assembly or in council, the governor shall have a negative voice; and no such orders, &c., shall be of any effect, without his consent, &c.,—this power of a negative, they say, must, from the nature of the thing, be confined to acts of government which are not judicial, and therefore cannot have respect to the removal of an officer, which is in its nature judicial†. They conclude

* The council not only take a part of the charter, and argue from it without considering the other parts with it; but they take a clause of a paragraph, the whole of which runs thus:—"And our will and pleasure is, that the governor of our said province, for the time being, shall have authority, from time to time, at his discretion, to assemble and call together the councillors, or assistants, of our said province, for the time being; and that the said governor, with the said assistants or councillors, or seven of them at the least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of our said province." And they not only take a part, separate from the whole, but, in this part, alter the pointing of the printed editions of the charter, and, by taking the comma from the word "governor," and placing it after the word "councillors," they make the holding a council the joint act of governor and councillors, contrary to the plain sense of that part of the paragraph which they designedly omitted, and contrary to the whole spirit of the charter.

† The council were led into this reasoning, from an instruction which the governor had communicated to them, in his speech at opening the session.

There were two instances in which the governor and council became a court, by force of the province law. By the charter, the governor is, with the council or assistants, to do all that is necessary for the probate of wills and granting administrations. And the governor at first acted as supreme ordinary, as in the king's governments, taking the advice of council. After some time, he appointed inferior judges, or surrogates, one in each county, nominated by him, and consented to by the council. By a province law, it was provided,

1774 clude their message to the governor, with a declaration of their readiness to hear and determine upon the impeachment, and their desire, that the governor with the council would appoint a time for that purpose.

From the declaration of Mr. Adams, when he

vided, that when any person was aggrieved by the sentence or decree of a judge, he might appeal to the governor and council.

For forty years together there had been no difficulty. Hearings were had before the governor upon appeals, the council being present. After the hearing, the governor stated the case, and his opinion upon it, and either the council had given their opinion according to his, or he had, perhaps, waived his own views, and conformed to their sentiments and advice; but, however that may have been, no cause had failed of a final decision. At length, an appeal was brought from the sentence of an inferior judge upon the appointment of an administrator to an intestate estate. The council were of one opinion, and the governor of another. Neither would yield to the other, and the administration was stopped for many years.

By another province law, authority to determine in all controversies upon marriage and divorce, was given to the governor and council. Governors in general supposed the rule of law in England to be their rule, as there were no provisional laws respecting such cases. The council thought the divine law, in what they supposed to be the plain meaning of it in cases of adultery, ought to be the rule. The greatest inconvenience was, that many married persons, where adultery had been proved, could have no relief, the council not agreeing to a separation *a mens et thoro*, nor the governor *a vinculo*. Governor Hutchinson had represented the discontent arising from this matter of dispute, and the danger of its increasing. This representation arrived when there was a disposition to lenient measures; and it was determined, that, in both these cases, the governor should consider himself as *primus inter pares*, and that the major vote of the whole should decide. The consequences were not considered, nor, perhaps, the real design of the charter, and the deviation from it caused by the words, "governor and council" in familiar use, instead of governor with, or with advice of, "the council." The same reasoning expressed in the opinion upon which this instruction was founded, the council made use of, and referred to, in the case of the chief justice, having first established the governor and council a judicatory in that case also; and as "inquiring and determining" was sufficient to denominate them a judicatory, the rule would soon be extended, and the constitution be totally changed.

delivered

delivered the impeachment, that the governor, though 1774
absent, was presumed to be present, and from the
declarations of both council and house, that the
governor and council were to be considered as a
judicatory, and from the further explanation of the
council, that the governor and council are so blended
together that no part has a negative, it was now
evident to the governor, that, if he did not prevent
it, the council would proceed to take cognizance of
the impeachment, in the absence of the governor,
presuming him to be present, and in this way in-
crease the disorders in the government. Having
given his assent to such bills as were prepared for it,
omitting the usual formality of sending for the house
to the council chamber, and of closing the session
with a speech, he sent the secretary with a message
to the two houses, signifying to them, that he had
passed over without notice, the groundless, unkind,
and illiberal charges and insinuations from each
house against himself, rather than that any part of
the publick business of the province should be left
unfinished ; but, as some of their votes and resolves,
which they had suffered to be made publick, struck
directly at the honour and authority of the king, and
of the parliament, he was obliged to stop them from
proceeding any further.

The house, being informed that this message was
reading in council, shut their doors, and refused
admission to the secretary, until they had perfected
what was necessary to the security of their pay as
members of the house, and had passed a resolve,
declaring that they had done all that, "in the capa-
city of representatives of the people in this court,
can be done, for the removal of Peter Oliver, esq.,
the chief justice, from his seat in the superior court ;
and that it must be presumed that the governor's
refusing to take any measures therein, is, because he
also

1774 also receives his support from the crown." They also gave directions to their committee of correspondence, to write and transmit letters to the other colonies, and to Dr. Franklin, relating to the chief justice's receiving a salary from the crown, and to the enormous powers of the courts of admiralty, and other matters which they shall judge important to be communicated; and then suffered themselves to be prorogued: and a few days after, by proclamation, they were dissolved; their committee of correspondence*, which consisted of those members which governed all the measures of the house, surviving, and continuing, though by another name, to prosecute measures for promoting the same purposes.

The course of the law was now wholly stopped. The other justices were authorized to proceed on business without the chief justice; but juries were

* The governor in his speech had acquainted the two houses, that the king had signified his disapprobation of their appointing committees to sit and act during the recess of the assembly. This might well be considered as a very mild reproof for a very unconstitutional practice. In the council it excited further resentment against the governor, and his predecessor. The latter, they say, had, from time to time, procured letters of instruction to secure himself in carrying into execution a plan which he had laid, for depriving the province, and all America, of their liberties; and they add, with a view to the former, that the same mode of proceeding has been continued; but they humbly hope, from the goodness and justice of his majesty, and the distinguishing virtues of the earl of Dartmouth, the province will be made happy by the "removal" of all its grievances.

The house are not less censorious in their answer, and say, that, as the province has heretofore felt the great misfortune of the displeasure of their sovereign, by means of misrepresentations, there is room to apprehend, that his majesty has, in this instance also, been misinformed, and that there are good grounds to suspect, that they who may have misinformed him have had in meditation further measures destructive to the colonies, which they were apprehensive would be defeated by means of committees of correspondence.

influenced

influenced to refuse to appear and act, because the 1774 chief justice continued in office.

All legislative, as well as executive power was gone, and the danger of revolt was daily increasing. The governor retained the title of captain-general, but he had the title only. The inhabitants, in many parts of the province, were learning the use of fire-arms, but not under the officers of the regiment to which they belonged. They were forming themselves into companies for military exercise, under officers of their own choosing; hinting the occasion there might soon be for employing their arms in defence of their liberties. The people had been persuaded, that their religion, as well as their liberties, was in danger. It was immaterial whether they had been deceived, or not,—the persuasion was the same,—and this was what would cause them to go all lengths, and to surmount the greatest difficulties. The only restraint they had ever been under, the apprehension of punishment, now ceased. Impunity for so many past breaches of law, and the great number of persons now involved, caused them to depend upon like impunity for every future breach. The governor saw no prospect of giving satisfaction to the king's ministers. His intention, in calling upon the assembly to check the progress of the principles of rebellion among the people, in the arguments which he used to shew they were unjustifiable, and in expressing his willingness to hear any objections, was allowed to be good; but it was thought that these were points which could not be too much kept out of sight. He had long seen the mischiefs which sprung from neglect, in suffering such principles to be maintained, and the fallacies by which they were supported to remain unexposed. Under these discouragements, he determined, without delay, to go to England, and was treating for his passage, and preparing for his voyage, when the lieutenant-

1774 lieutenant-governor was taken sick. After a short decline, an apoplectick fit put an end to his life *. There was no room for the governor to deliberate. He wished for a temporary relief at least, from so heavy a burden as that of being at the head of a government, all the other parts whereof were united against an authority which he was bound to acknowledge, and, as far as was in his power, to uphold. But, immediately upon his absence, the council would be at the head of the government, and unite with the other parts of the body.

* A very small proportion of mankind have so well deserved to be characterised "*Integer vita, scelerisque purus*," as lieutenant-governor Oliver. Scarce any man ever had a more scrupulous and sacred regard to truth, and yet, to such degree did the malignant, and for ever to be detested spirit of party prevail, as to cause a writer in the publick papers in England, under the signature of Junius Americanus, to bring against him a charge of the horrid crime of perjury. The council of Massachusetts Bay, from whose votes and resolves this writer attempted to support the charge, by a vote which they caused to be printed, repaired the injury as well as they could; but a consciousness of his innocence and integrity was his best support. This abuse, however, together with the reproaches most injuriously cast upon him by the resolves of the council and house, as the determined enemy to the liberties of his country, the interest whereof, according to the best of his judgment, which was much superior to that of his most virulent persecutors, he always had at heart, affected his spirits in advanced life, increased the bilious disorders to which his constitution had always been subject, and evidently accelerated his death. Even his funeral afforded opportunity for the spirit of party to shew itself. The members of the house of representatives, who were invited, being in one house, and the admiral, general, and other officers of the navy and army, in another, the latter first came out, and followed the relatives of the deceased, which was so resented by some of the representatives, as to cause them to refuse to join in the procession, and to retire in a body. Marks of disrespect were also shewn by the populace to the remains of a man, whose memory, if he had died before this violent spirit was raised, would have been revered by all orders and degrees of men in the province.

"Fuit hoc luctuosum suis, acerbum patriæ, grave bonis omnibus: sed ii tamen rempublicam casus secuti sunt, ut mihi non erepta L. Crasso à diis immortalibus vita, sed donata mors esse videatur."—*Cic. de Orat.* l. 3.

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This consideration alone was sufficient to cause 1774 him to lay aside all thoughts of quitting his station, until another lieutenant-governor should be appointed. This he could not expect in less than three or four months. He knew, that, in the mean time, anarchy must be daily increasing. A few days before *, what was still called the massacre, was commemorated by an oration in one of the meeting-houses; and in the evening, a select number of persons, styled in the newspapers, friends of constitutional liberty, assembled at a house in King street, Boston. Among them, were the speaker and divers members of the house of representatives. Figures were exhibited, through the windows of the room, to the people in the street, of the governor and chief justice, in derision. Such abuse of private characters, it is generally best to treat with contempt †.

For abuse of publick characters, there was, at this time, no other remedy. The vindication of the characters of the governor and lieutenant-governor, after a hearing before the lords of the privy council, and the removal of Dr. Franklin and Mr. Temple from their posts, tended to irritate, and stir up to revenge; which was all the effect upon their friends in America, who were past all fears of any resentment ever to extend to themselves. But the intelligence received, soon after, of an act of parliament for shutting up the port of Boston until satisfaction should be made for the tea which had been destroyed, of the appointment of general Gage to the command of the province, while he was general and commander-in-chief of the king's troops, and of orders for several regiments, without delay, to be transported to Boston, and to be stationed there, at

* March 5th, 1774.

† "Maledicta spreta exolescunt: si irascaris, agnita videntur."

—*Tacit.*

1774 first seemed to strike the people with consternation. The leaders, however, discovered a more determined spirit than ever, and declared that they would rather submit to the last extremity, than to the payment of the sum demanded. Their sufferings would be in the cause of liberty, and probably, in their consequences, would prove the means of acquiring that liberty and independence, to which, as men, and as Englishmen, they had a just claim.

Upon inquiry made by the governor into the condition of a large ship lying at Casco Bay, with a view to the passage of himself and his family to England, letters had been written to Bristol, advising that he had taken his passage, and that the lieutenant-governor was dying. This coming to the knowledge of the ministry, it was immediately determined to appoint another governor, to prevent the council from taking or holding the command; and it being thought that some advantage might arise, if the government of the province and the command of the king's forces should be in the same person, general Gage was fixed upon, and, though he was not nominated in council until the 2nd of April, he arrived in Boston the 13th of May.

Governor Hutchinson, when he received the notice of his being superseded, received also assurance, that general Gage's continuance would, probably, not be of long duration, and that it was the king's intention that he should be reinstated, if agreeable to him, whenever general Gage's services as commander-in-chief should be required in any other situation, and that, in the mean time, he should be no sufferer by the discontinuance of his commission.

This mark of royal favour increased popular displeasure. The people were also made to believe, that these measures were the effects of his misrepresentations, and the clamour was greater against him
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than ever; and, being urged to it by his friends, he 1774 determined to take his lodging at the castle, while he remained in the province. The next morning after his removal, he had the pleasure of receiving his successor, who continued there until preparations were made for his publick entry.

Any marks of respect from the council and house of representatives, or from the inhabitants of Boston collectively, were not to be expected upon the governor's leaving the province. They would have been the contrast of all the treatment, which the controversy that he had been engaged in had occasioned from his first taking the chair. But, in the short time he remained after the new governor arrived, he received the several addresses of one hundred and twenty of the merchants and principal gentlemen of the town of Boston of very reputable characters, of the gentlemen of the law, with three or four exceptions only, of the episcopal clergy, of the magistrates of the county of Middlesex, of the principal gentlemen of the town of Salem, and of the principal gentlemen of the town of Marblehead, expressing their approbation of his publick conduct, and their affectionate wishes for his prosperity; and the magistrates of the county of Plymouth were so polite as to direct an address to be sent to him in England, it not being prepared before he left Boston*.

At the time he sailed †, there were great expectations in the friends of government, that they should be able, if not by a vote of the town, by subscriptions of private merchants and others, to raise a sufficient sum for payment of the tea; and he hoped that there would yet be a possibility of the

* Many of the addressers, who were without protection, were afterwards compelled by the people to make recantations, and to publish them in the newspapers.

† June 1st, 1774.

restoration

1774 restoration of peace and order, and that the last resort in all governments might be avoided; but, upon his arrival in England, he found that another act of parliament had passed, for an alteration of the charter, the consequences of which he dreaded. The people, by their own authority, formed a legislative body; and from that time all pacifick measures for restoring their former dependence upon the supreme authority of the British dominions, were to no purpose.

A P P E N D I X.

APPENDIX.

A.—Page 92.

Message from the Council and Assembly to Governor Bernard, acknowledging their submission to Acts of Parliament, &c. Jan. 27, 1761.

May it please your Excellency,

YOUR excellency's message to both houses of the 16th inst. we have maturely considered, and beg leave to observe, that we are far from apprehending that a resolve of this court can alter an act of parliament. We are quite sensible, that if an act of this court should obtain the royal sanction, it cannot do it. Every act made by the general court or assembly of this province is voidable, because the same may be disallowed by his majesty. Every act we make, repugnant to an act of parliament extending to the plantations, is *ipso facto* null and void: nor is it in our hearts to desire your excellency ever to make the least infraction upon the king's prerogative relative to his majesty's revenue, or any one thing else—this we hold and maintain as sacred as we do the people's liberties: nor that your excellency would, contrary to your positive orders, manage or govern contrary to law,

It is our unanimous desire that the law may be ever the rule of your excellency's conduct, and that your excellency, in the observance thereof, may be always happy in the approbation of the king, and in the warmest affections, duty, and obedience of this whole province. Nor did the two houses ever, or would we, presume to meddle with the king's revenue, that is, with any monies not our own but his majesty's.

All that we are solicitous for is, to recover that money (to use your excellency's own words in your message) due to the treasury of this province upon account of the seizures made, pursuant to the act of the 6th of Geo. 2; which monies your excellency at present apprehends must be sued for by the attorney-general only.

To which we would answer; that, agreeable to your excellency's own express words, this money is the province's; and
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most assuredly it cannot in any sense be the king's, when the parliament of Great Britain have granted it to the province, unless its being granted to his majesty for the use of the province, makes it a grant to his majesty's use.

If this should be the case, the general assembly of the province, and all former governors, and even all former kings, from the date of the royal charter, have been mistaken; and we must expect, for the future, that all the revenue of this province, all the monies that may become due by excise, impost, &c. in the collector's or constable's hands, or, through their deficiency, not collected, must be sued for by the king's attorney, and through his hands (if ever) be paid unto the receiver-general of the province; which, it is very certain, would make that office very lucrative to the attorney-general, but most dangerous to the government, and grievous to the subject. For the grants of money made by the general assembly are always to his majesty, for the use of the province, in the same manner as the grant made by the act of parliament aforesaid, of one-third of the goods seized and forfeited, is for the support of this government.

Whereupon we are fully persuaded that both, according to your excellency's sense of the king's revenue, are the king's revenue; for if not both, neither are. If both are, then the king's attorney is as much obliged to sue in the one case as in the other: and the receiver-general is quite out of the question in both. Whereas he, and he only, hath done it, and in consequence of that provision which hath constantly been made by act of assembly, to enable him to do it: and there never was any objection made by the governor, or by his majesty, when such acts were sent home, and were laid before him for his royal approbation. Whereas had these monies thus granted to his majesty been a part of his revenue, and to have been recovered only by the attorney-general, he would have disallowed them: it being most apparent that both are equally his revenue, unless the same words in an act of parliament and in an act of the general assembly of this province, can have contrary constructions.

In this method we have ever been, and have found no disadvantages, but great benefit, a security of our monies, and an ease to the people:

Wherefore, we should be extremely grieved to be constrained to go out of this old way, and try one which was never gone into before. But should we alter this method, and put it into other hands, it is easy to foresee that many and great inconveniences and mischiefs would arise hereby to the province. For if the attorney-general (who is not chosen by the people) be wicked enough to keep, or lavish enough to spend, the money thus received for the province, what method can be devised to get it from him; since, upon your excellency's argument, no one can sue him but himself. This we do not suggest or think will be the case

case with the present attorney-general, for whom we have a high esteem ; but who may succeed him, or what will be hereafter, we cannot foretel. This we are certain of, that precedents never sleep, but will always be pleaded ; and therefore bad precedents should never be made, even in the best administration.

It may further be observed, that it is possible, in many cases, the attorney-general may really think that an action for the recovery of the province money will not lie, or cannot be maintained ; the general court may be quite in another sentiment, and the gentlemen of the law in the same sentiment with the assembly : in such case it will be very hard to oblige the attorney-general to pursue against his own judgment, as well as unsafe to the province.

But none of these inconveniences can arise, if the treasurer and receiver-general brings the action, when the court thinks proper to empower and order him so to do, since he is annually chosen by the people, and is under bond with sureties for his fidelity.

Further, this money being the province's, and entirely at their disposal, an action can well be maintained by the receiver-general of the province, in the name of the province, against any person that shall retain the same, declaring that that person had received so much of the province's money for the province's use, and promised to render a reasonable account thereof, or pay the same on demand. And it must appear very surprising if we could not maintain such an action, and employ whom we thought best in it ; since, in all popular statutes where a forfeiture is to the king and the informer, the latter, unless by such act particularly restricted, may prosecute in the common law courts, and in the court of admiralty, as well for himself as the king, and it is continually done, and the informer chuses what attorney he pleases to manage the same.

Your excellency is pleased in your message to observe, that for the province treasurer to bring the action would amount to altering an act of parliament. Your excellency did not refer us to the act, and therefore we can make this answer only: That we have most carefully looked over the acts of parliament relative to the point in dispute ; we can find none ; and that if there is one, we are sensible that it must have its effect.

Upon the whole, we cannot, consistent with our duty, reconsider the resolve passed by both houses. We humbly hope that we have removed the difficulty which lay in your excellency's way, and that you will be pleased to give your assent to it, assuring ourselves that your excellency will be always ready to vindicate and support the rights of the province by all proper and legal means.

B.—Page 119.

*Resolves of the Assembly of Virginia on the Stamp Act.
May 28, 1765.*

Resolved,—THAT the first adventurers and settlers of this his majesty's colony and dominion of Virginia, brought with them and transmitted to their posterity, and all other his majesty's subjects since inhabiting in this his majesty's said colony, all the liberties, privileges, franchises, and immunities, that have at any time been held and enjoyed, or possessed by the people of Great Britain.

Resolved,—That by two royal charters granted by king James the first, the colonies aforesaid are declared entitled to all liberties, privileges, and immunities, of denizens and natural-born subjects, to all intents and purposes, as if they had been abiding and born within the realm of England.

Resolved,—That the taxation of the people by themselves, or by persons chosen by themselves to represent them, who can only know what taxes the people are able to bear, or the easiest method of raising them, and must themselves be affected by every tax laid on the people, is the only security against a burdensome taxation, and the distinguishing characteristick of British freedom, without which the ancient constitution cannot exist.

Resolved,—That his majesty's liege people of this his most ancient and loyal colony, have without interruption enjoyed the inestimable right of being governed by such laws respecting their internal polity and taxation, as are derived from their own consent, with the approbation of their sovereign or his substitutes, and that the same hath been constantly recognised by the king and people of Great Britain.

APP. C.

C.—Page 180.

*Governor Bernard's Speech to the Assembly at the time
of the Stamp Act. September 25, 1765.*

Gentlemen of the Council, and,
Gentlemen of the House of Representatives,

I HAVE called you together at this unusual time, in pursuance of the unanimous advice of a very full council, that you may take into consideration the present state of the province, and determine what is to be done at this difficult and dangerous conjuncture. I need not recount to you the violences which have been committed in this town, nor the declarations which have been made and still subsist, that the act of parliament for granting stamp-duties in the British colonies shall not be executed within this province. The ordinary executive authority of this government is much too weak to contradict such declarations, or oppose the force by which they are supported: it has therefore been found necessary to call the whole legislative power in aid of the executive government. From this time this arduous business will be put into your hands, and it will become a provincial concern.

Upon this occasion it is my duty to state to you what will probably be the consequences, if you should suffer a confirmed disobedience of this act of parliament to take place. I am sensible how dangerous it is to speak out at this time, and upon this subject; but my station will not allow me to be awed or restrained in what I have to say to the general court: not only my duty to the king, but my duty to the province, my love to it, my concern for it, oblige me to be plain and explicit upon this occasion. And I hope no advocate for liberty will violate that essential constitutional right, freedom of speech in the general assembly.

As I desire not to dictate to you, and would avoid all appearance of it, I shall resolve what I have to recommend to your consideration into mere questions, and avoid assertions of my own in matters which are doubtful. I shall not enter into any disquisition of the policy of the act: it has never been a part of my business to enter into any judgement of it; and as I have not hitherto had any opportunity to express any sentiments of it, I shall not do it now. I have only to say, that it is an act of the parliament of Great Britain, and as such ought to be obeyed by

the subjects of Great Britain. And I trust that the supremacy of that parliament, over all the members of their wide and diffused empire, never was, and never will be denied within these walls.

The right of the parliament of Great Britain to make laws for the American colonies, however it has been controverted in America, remains indisputable at Westminster. If it is yet to be made a question, who shall determine it but the parliament? If the parliament declares that this right is inherent in them, are they likely to acquiesce in an open and forcible opposition to the exercise of it? Will they not more probably maintain such right, and support their own authority? Is it in the will, or in the power, or for the interest, of this province to oppose such authority? If such opposition should be made, may it not bring on a contest, which may prove the most detrimental and ruinous event which could happen to these people?

It is said, that the gentlemen who opposed this act in the house of commons, did not dispute the authority of parliament to make such a law, but argued upon the inexpediency of it at this time, and the inability of the colonies to bear such an imposition. These are two distinct questions, which may receive different answers. The power of the parliament to tax the colonies may be admitted, and yet the expediency of exercising that power at such a time, and in such a manner, may be denied. But if the questions are blended together, so as to admit of but one answer, the affirmative of the right of parliament will conclude for the expediency of the act. Consider therefore, gentlemen, if you found your application for relief upon denying the parliament's right to make such a law, whether you will not take from your friends and advocates the use of those arguments, which are most likely to procure the relief you desire?

You, Gentlemen of the House of Representatives, have proposed a congress of committees from the representatives of several colonies, to consider of a general, united, dutiful, loyal, and humble representation which you have proposed? Will the denying the power and authority of the king and parliament be the proper means to obtain their favour? If the parliament should be disposed to repeal this act, will they probably do it whilst there subsists a forcible opposition to the execution of it? Is it not more probable, that they will require a submission to their authority as a preliminary to their granting you any relief? Consider then, whether the opposition to the execution of the act has not a direct tendency to defeat the measures you have taken to procure a repeal of it, if you do not interpose to prevent it.

By this act, all papers which are not duly stamped are to be null and void; and all persons who shall sign, engross, or write any such papers, will forfeit, for each fact, ten pounds. If therefore stamps are not to be used, all publick offices must be shut up: for it cannot be expected, that any officer should incur penalties

ties much beyond all he is worth, for the sake of doing what must be null and void when it is done. I would therefore desire you to consider what effects the stopping two kinds of offices only, the courts of justice and the custom-houses, will have upon the generality of the people. When the courts of justice are shut up, no one will be able to sue for a debt due to him. Must not then all credit and mutual faith cease of course, and fraud and rapine take their place? Will any one's person or property be safe, when their sole protector, the law, is debased to act? Must not the hand of violence be then let loose, and force of arms become the only governing power? Is it easy to form an adequate idea of a state of general outlawry? And may not the reality exceed the worst idea you can form of it?

If trade and navigation shall cease by the shutting up the ports of this province for want of legal clearances, are you sure that all other ports which can rival these will be shut up also? Can you depend upon recovering your trade again entire and undiminished, when you shall be pleased to resume it? Can the people of this province subsist without navigation for any long time? What will become of the seamen who will be put out of employment? What will become of the tradesmen who immediately depend upon the navigation for their daily bread? Will these people endure want quietly without troubling their neighbours? What will become of the numberless families which depend upon fishery? Will they be able to turn the produce of their year's work into the necessaries of life without navigation? Are there not numberless other families who do not appear immediately concerned in trade, and yet ultimately depend upon it? Do you think it possible to provide for the infinite chain of the dependants upon trade, who will be brought to want by the stopping of it? Is it certain that this province has a stock of provisions within itself sufficient for all its inhabitants, without the usual imports? If there should be a sufficiency in general, can it be distributed among all the individuals without great violence and confusion? In short, can this province bear a cessation of law and justice, and of trade and navigation, at a time when the business of the year is to be wound up, and the severe season is hastily approaching? These are serious and alarming questions, which deserve a cool and dispassionate consideration.

I would not willingly aggravate the dangers which are before you: I do not think it very easy to do it: this province seems to me to be upon the brink of a precipice; and that it depends upon you to prevent its falling. Possibly I may fear more for you than you do for yourselves; but in the situation you now stand in, a sight of your danger is necessary to your preservation; and it is my business to open it to you. But I do not pretend to enumerate all the evils which may possibly happen; several, and some of no little importance, will occur to you, though they have been omitted
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by me. In a word, gentlemen, never were your judgment and prudence so put to a trial, as they are likely to be upon the present occasion.

I am aware that endeavours have been, or may be used, to lessen my credit with you, which I have hitherto always studied to improve to the advantage of the province. Violences seldom come alone: the same spirit which pulls down houses attacks reputations. The best men in the province have been much injured in this way: I myself have not escaped this malignity. But I shall not lower myself so as to answer such accusers. To you I shall always owe such explanations as shall be necessary to the improvement of a good understanding between us. However, I will take this opportunity to declare publicly, that ever since I have sat in this chair, I have been constantly attentive to the true interests of this province according to the best of my understanding, and have endeavoured to promote them by all means in my power. The welfare of this people is still uppermost in my heart: and I believe no man feels more for them than I do at this present time.

Gentlemen of the House of Representatives,

I must recommend you to do an act of justice, which at the same time will reflect credit upon yourselves; I mean, to order a compensation to be made to the sufferers by the late dreadful disturbances. Their losses are too great for them to sit down with: one of them amounts to a very large sum. You must be sensible that it will be expected that these damages be made good; and it will be better for you to do it of your own accord before any requisition is made to you. An estimate of these damages is made by a committee of the council pursuant to order, which will be laid before you.

Gentlemen,

I am sensible of the difficulty of the part you have to act; it may not be sufficient for you to be convinced of a submission to the law for the present, unless the same conviction shall be extended to the people in general. If this should be so, I can only desire you to use all means to make yourselves well acquainted with the exigency of the present time; and if you shall be persuaded that a disobedience to the act is productive of much more evil than a submission to it can be, you must endeavour to convince your constituents of the truth of such persuasion. In such case I shall readily grant you a recess for a sufficient time; and I shall be ready to concur with you in all other legal measures to provide for the safety of the people in the best manner.

FRA. BERNARD.

APP. D.

D.—Page 130.

The Answer of the Assembly. October 25, 1765.

May it please your Excellency,

THE house of representatives have entered into a due consideration of your speech to both houses at the opening of this session ; and should have earlier communicated to your excellency our sentiments thereupon, had not the late sudden and unexpected adjournment prevented it.

We must confess, that after your excellency had called us together, in pursuance of the unanimous advice of a very full council, we were in hopes you would have given the assembly time then to have considered the critical state of the province, and determined what was proper to be done at so difficult and dangerous a conjuncture.

Your excellency tells us, that the province seems to be upon the brink of a precipice! A sight of its danger is then necessary for its preservation. To despair of the commonwealth, is a certain presage of its fall: your excellency may be assured, that the representatives of the people are awake to a sense of its danger, and their utmost prudence will not be wanting to prevent its ruin.

We indeed could not have thought that a weakness in the executive power of the province had been any part of our danger, had not your excellency made such a declaration in your speech : certainly the general assembly have done every thing incumbent on them ; and laws are already in being for the support of his majesty's authority in the province. Your excellency doth not point out to us any defect in those laws ; and yet you are pleased to say, that the executive authority is much too weak. Surely you cannot mean, by calling the whole legislative in aid of the executive authority, that any new and extraordinary kind of power should by law be constituted, to oppose such acts of violence as your excellency may apprehend from a people ever remarkable for their loyalty and good order, though at present uneasy and discontented. If then the laws of the province for the preservation of his majesty's peace are already sufficient, your excellency we are very sure need not to be told, to whose department it solely belongs to appoint a suitable number of magistrates to put those laws in execution, or remove them in case of failure of their duty

duty therein. And we hope this important trust will remain with safety to the province, where the constitution has lodged it.

Your excellency is pleased to tell us, that declarations have been made and still subsist, that the act of parliament for granting the stamp-duties in the colonies, shall not be executed within the province. We know of no such declarations. If any individuals of the people have declared an unwillingness to subject themselves to the payment of the stamp-duties, and choose rather to lay aside all business, than to make use of the stamped papers, as we are not accountable for such declarations, so neither can we see any thing criminal in them: this house has no authority to control their choice in this matter: the act does not oblige them to make use of the papers; it only exacts the payment of certain duties for such papers as they may incline to use: such declarations may possibly have been made and may still subsist, very consistently with the utmost respect to the king and parliament.

Your excellency has thought proper to enumerate very minutely the inconveniences that may arise from the stamped papers not being distributed among the people; with respect to some of which your love and concern for the province leads you to fear more for us than we do for ourselves. We cannot think your excellency would willingly aggravate our dangers; we are not in particular so alarmed, as your excellency seems to be, with the apprehension of the hand of violence being let loose. Your excellency, upon recollection, will find that all papers relative to crown matters are exempt from stamps. The persons of his majesty's good subjects will still remain secure from injury: that spirit which your excellency tells us attacks reputations, and pulls down houses, will yet be curbed by the law. The estates of the people will remain guarded from theft or open violence. There will be no danger of force of arms becoming the only governing power. Nor shall we realize what your excellency is pleased to call a state of general outlawry. This we think necessary to be observed without a particular consideration of all the consequences, which your excellency fears, to prevent, if possible, any wrong impressions from fixing in the minds of ill-disposed persons, or remove them if already fixed.

You are pleased to say, that the stamp act is an act of parliament, and as such ought to be observed. (This house, sir, has too great a reverence for the supreme legislature of the nation, to question its just authority: it by no means appertains to us to presume to adjust the boundaries of the power of parliament; but boundaries there undoubtedly are. We hope we may, without offence, put your excellency in mind of that most grievous sentence of excommunication solemnly denounced by the church in the name of the sacred Trinity, in the presence of king Henry the third, and the estates of the realm, against all those who should make statutes, or observe them, being made contrary to, the

the liberties of Magna Charta.—We are ready to think those zealous advocates for the constitution usually compared their acts of parliament with Magna Charta; and if it ever happened that such acts were made as infringed upon the rights of that charter, they were always repealed. We have the same confidence in the rectitude of the present parliament; and therefore cannot but be surprised at an intimation in your speech, that they will require a submission to an act, as a preliminary to their granting relief from the unconstitutional burdens of it; which we apprehend includes a suggestion in it far from your excellency's design, and supposes such a wanton exercise of mere arbitrary power, as ought never to be surmised of the patrons of liberty and justice.

Furthermore, your excellency tells us that the right of the parliament to make laws for the American colonies remains indisputable in Westminster: (without contending this point, we beg leave just to observe that the charter of this province invests the general assembly with the power of making laws for its internal government and taxation; and that this charter has never yet been forfeited.) The parliament has a right to make all laws within the limits of their own constitution; they claim no more. Your excellency will acknowledge that there are certain original inherent rights belonging to the people, which the parliament itself cannot divest them of, consistent with their own constitution: among these is the right of representation in the same body which exercises the power of taxation. There is a necessity that the subjects of America should exercise this power within themselves, otherwise they can have no share in that most essential right, for they are not represented in parliament, and indeed we think it impracticable. Your excellency's assertion leads us to think that you are of a different mind with regard to this very material point, and that you suppose we are represented: but the sense of the nation itself seems always to have been otherwise. The right of the colonies to make their own laws and tax themselves, has been never, that we know of, questioned; but has been constantly recognised by the king and parliament. The very supposition that the parliament, though the supreme power over the subjects of Britain universally, should yet conceive of a despotick power within themselves, would be most disrespectful: and we leave it to your excellency's consideration, whether to suppose an indisputable right in any government, to tax the subject without their consent, does not include the idea of such a power. idea

Our duty to the king, who holds the rights of all his subjects sacred as his own prerogative, and our love to our constituents, and concern for their dearest interests, constrain us to be explicit upon this very important occasion. We beg that your excellency would consider the people of this province as having the strongest affection for his majesty, under whose happy government they have

have felt all the blessings of liberty: they have a warm sense of the honour, freedom, and independence, of the subjects of a patriot king: they have a just value for those inestimable rights, which are derived to all men from nature, and are happily interwoven in the British constitution: they esteem it sacrilege for them ever to give them up; and rather than lose them, they would willingly part with every thing else. We deeply regret it, that the parliament has seen fit to pass such an act as the stamp act: we flatter ourselves that the hardships of it will shortly appear to them in such a light, as shall induce them in their wisdom to repeal it: in the mean time we must beg your excellency to excuse us from doing any thing to assist in the execution of it. Were we, in order to avoid assertions, to resolve what we have to say on this head into mere questions, we should with all humility ask, whether it would be possible for us to add any weight to an act of that most august body, the parliament? Whether it would not be construed as arrogance and presumption in us to attempt it? Whether your excellency can reasonably expect that the house of representatives should be active in bringing a grievous burthen upon their constituents? Such a conduct in us would be to oppose the sentiments of the people whom we represent, and the declared instruction of most of them.—They complain that some of the most essential rights of Magna Charta, to which, as British subjects, they have an undoubted claim, are injured by it; that it wholly cancels the very conditions upon which our ancestors settled this country, and enlarged his majesty's dominion, with much toil and blood, and at their sole expense; that it is totally subversive of the happiest frame of subordinate civil government expressed in our charter, which amply secures to the government our allegiance, to the nation our connection, and to ourselves the indefeasible rights of Britons; that it tends to destroy that mutual confidence and affection, as well as that equality, which ought ever to subsist among all his majesty's subjects in his wide and extended empire; that it may be made use of as a precedent for their fellow-subjects in Britain for the future to demand of them what part of their estates they shall think proper, and the whole if they please; that it vests a single judge of the admiralty with a power to try and determine their property in controversies arising from internal concerns, without a jury, contrary to the very expression of Magna Charta, that no freeman shall be amerced, but by the oath of good and lawful men of the vicinage; that it puts it in the power of an informer to carry a supposed offender more than a thousand miles for trial: and what is the worst of all evils, if his majesty's American subjects are not to be governed, according to the known stated rules of the constitution, as those in Britain are, it is greatly to be feared that their minds may in time become disaffected; which we cannot even entertain the most distant thought of without the greatest

greatest abhorrence.—We are truly sorry that your excellency has never made it a part of your business to form any judgment of this act; especially as you have long known what uneasiness the most distant prospect of it gave to his majesty's good subjects in America, and of this province of which you are substituted head and father. Had your excellency thought proper to have seasonably entered into a disquisition of the policy of it, you would, we doubt not, have seen that the people's fears were not without good foundation; and the love and concern which you profess to have for them, as well as your duty to his majesty, whose faithful subjects they are, might have been the most powerful motive to your excellency to have expressed your sentiments of it early enough to those whose influence brought it into being.

We cannot help expressing our great uneasiness, that after mentioning some violences committed in the town of Boston, your excellency should ask this house, whether such proceedings are consistent with the dutiful, humble, and loyal representations which we propose should be made: we are sure your excellency will not expressly charge us with encouraging the late disturbances; and yet, to our unspeakable surprise and astonishment, we cannot but see, that by fair implication it may be argued from the manner of expression, that an odium was intended to be thrown on the province. We inherit from our ancestors the highest relish for civil liberty, but we hope never to see the time when it shall be expedient to countenance any methods for its preservation, but such as are legal and regular. When our sacred rights are infringed, we feel the grievance; but we understand the nature of our happy constitution too well, and entertain too high an opinion of the virtue and justice of the supreme legislature, to encourage any means of redressing it, but what are justifiable by the constitution. We must therefore consider it as unkind for your excellency to cast such a reflection on a province whose unshaken loyalty and indissoluble attachment to his majesty's most sacred person was never before called in question, and, we hope in God, never will again. We should rather have thought your excellency would have expressed your satisfaction in presiding over so loyal a people, who in that part of the government where the violences were committed, before there was time for them to be supported by the arm of civil power, and even while the supreme magistrate was absent, by their own motion raised a spirit and diffused it through all ranks, successfully to interpose and put a stop to such dangerous proceedings.

Your excellency is pleased to recommend a compensation to be made to the sufferers by the late disturbances.—We highly disapprove of the late acts of violence which have been committed; yet, till we are convinced that to comply with what your excellency recommends, will not tend to encourage such outrages in time to come, and till some good reason can be assigned why the losses

losses those gentlemen have sustained should be made good, rather than any damage which other persons on any different occasions might happen to suffer, we are persuaded we shall not see our way clear to order such a compensation to be made. We are greatly at a loss to know who has any right to require this of us, if we should differ from your excellency in point of its being an act of justice which concerns the credit of the government. We cannot conceive why it should be called an act of justice, rather than generosity, unless your excellency supposes a crime committed by individuals, chargeable upon a whole community.

We are very sorry that your excellency should think it needful to intimate, that any endeavours have been, and may be used, to lessen your credit with this house. Your excellency cannot but be sensible, that when the popular pulse beats high for privileges, it is no unusual thing for a clamour to be raised against gentlemen of character and eminence. We can assure you that our judgment of men, especially those in high stations, is always founded upon our experience and observation. While your excellency is pleased to make your duty to our most gracious sovereign, and a tender regard to the interest of his subjects of this province, the rule of your administration, you may rely upon the readiest assistance that this house shall be able to afford you.—And you will have our best wishes that you may have wisdom to strike out such a path of conduct, as, while it secures to you the smiles of your royal master, will at the same time conciliate the love of a free and loyal people.

E.—Page 132.

*The Resolves of the Assembly on the same occasion.
October 29, 1765.*

WHEREAS the just rights of his majesty's subjects of this province, derived to them from the British constitution as well as the royal charter, have been lately drawn into question: In order to ascertain the same, this house do unanimously come into the following resolves.

I. *Resolved*,—That there are certain essential rights of the British constitution of government, which are founded in the law
of

of God and nature, and are the common rights of mankind;—
therefore,

II. *Resolved*,—That the inhabitants of this province are unalienably entitled to those essential rights in common with all men: and that no law of society can, consistent with the law of God and nature, divest them of those rights.

III. *Resolved*,—That no man can justly take the property of another without his consent; and that upon this original principle the right of representation in the same body, which exercises the power of making laws for levying taxes, which is one of the main pillars of the British constitution, is evidently founded.

IV. *Resolved*,—That this inherent right, together with all other essential rights, liberties, privileges, and immunities of the people of Great Britain, have been fully confirmed to them by Magna Charta, and by former and later acts of parliament.

V. *Resolved*,—That his majesty's subjects in America are, in reason and common sense, entitled to the same extent of liberty with his majesty's subjects in Britain.

VI. *Resolved*,—That by the declaration of the royal charter of this province, the inhabitants are entitled to all the rights, liberties, and immunities of free and natural subjects of Great Britain, to all intents, purposes, and constructions whatever.

VII. *Resolved*,—That the inhabitants of this province appear to be entitled to all the rights aforementioned, by an act of parliament, 18th of Geo. II.

VIII. *Resolved*,—That those rights do belong to the inhabitants of this province, upon principles of common justice; their ancestors having settled this country at their sole expense, and their posterity having approved themselves most loyal and faithful subjects of Great Britain.

IX. *Resolved*,—That every individual in the colonies is as advantageous to Great Britain, as if he were in Great Britain, and held to pay his full proportion of taxes there; and as the inhabitants of this province pay their full proportion of taxes for the support of his majesty's government here, it is unreasonable for them to be called upon to pay any part of the charges of the government there.

X. *Resolved*,—That the inhabitants of this province are not, and never have been, represented in the parliament of Great Britain; and that such a representation there as the subjects in Britain do actually and rightfully enjoy, is impracticable for the subjects in America;—and further, that in the opinion of this house, the several subordinate powers of legislation in America were constituted upon the apprehensions of this impracticability.

XI. *Resolved*,—That the only method whereby the constitutional rights of the subjects of this province can be secure, consistent with a subordination to the supreme power of Great Britain, is by the continued exercise of such powers of government

as are granted in the royal charter, and firm adherence to the privileges of the same.

XII. Resolved, as a just conclusion from some of the foregoing resolves,—

That all acts made by any power whatever other than the general assembly of this province, imposing taxes on the inhabitants, are infringements of our inherent and unalienable rights, as men and British subjects, and render void the most valuable declarations of our charter.

XIII. Resolved,—That the extension of the powers of the court of admiralty within this province, is a most violent infraction of the right of trials by juries—a right which this house, upon the principles of their British ancestors, hold most dear and sacred; it being the only security of the lives, liberties, and properties of his majesty's subjects here.

XIV. Resolved,—That this house owe the strictest allegiance to his most sacred majesty king George the third; that they have the greatest veneration for the parliament; and that they will, after the example of all their predecessors, from the settlement of this country, exert themselves to their utmost in supporting his majesty's authority in the province, in promoting the true happiness of his subjects, and in enlarging the extent of his dominion.

Ordered,—That all the foregoing resolves be kept in the records of this house, that a just sense of liberty, and the firm sentiments of loyalty, may be transmitted to posterity.

F.—Page 184.

The Resolves of the Convention at New York.
October 19, 1765.

THE congress met according to adjournment, and resumed, &c. as yesterday. And upon mature deliberation agreed to the following declarations of the rights and grievances of the colonists in America, which were ordered to be inserted.

The members of this congress, sincerely devoted, with the warmest sentiments of affection and duty, to his majesty's person and government, inviolably attached to the present happy establishment of the protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this continent; having considered as maturely as time will permit, the circumstances of the said colonies, esteem it our indispensable duty to make the following declarations of our humble opinion respecting the most essential rights and liberties of the colonists, and of the grievances under which they labour by reason of several late acts of parliament.

I. That his majesty's subjects in these colonies owe the same allegiance to the crown of Great Britain, that is owing from his subjects born within the realm, and all due subordination to that august body the parliament of Great Britain.

II. That his majesty's liege subjects in these colonies are entitled to all the inherent rights and liberties of his natural born subjects within the kingdom of Great Britain.

III. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes be imposed on them, but with their own consent, given personally, or by their representatives.

IV. That the people of these colonies are not, and from their local circumstances, cannot be represented in the house of commons in Great Britain.

V. That the only representatives of the people of these colonies are persons chosen therein by themselves, and that no taxes ever have been or can be constitutionally imposed on them, but by their respective legislature.

VI. That all supplies to the crown being free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to his majesty the property of the colonists.

VII.

VII. That trial by jury is the inherent and invaluable right of every British subject in these colonies.

VIII. That the late act of parliament, entitled, "An act for granting and applying certain stamp duties, and other duties in the British colonies and plantations in America, &c," by imposing taxes on the inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

IX. That the duties imposed by several late acts of parliament, from the peculiar circumstances of these colonies, will be extremely burthensome and grievous, and from the scarcity of specie, the payment of them absolutely impracticable.

X. That as the profits of the trade of these colonies ultimately centre in Great Britain to pay for the manufactures which they are obliged to take from thence, they eventually contribute very largely to all supplies granted there to the crown.

XI. That the restrictions imposed by several late acts of parliament on the trade of these colonies will render them unable to purchase the manufactures of Great Britain.

XII. That the increase, prosperity, and happiness of these colonies depend on the full and free enjoyments of their rights and liberties, and an intercourse with Great Britain, mutually affectionate and advantageous.

XIII. That it is the right of the British subjects in these colonies to petition the king, or either house of parliament.

Lastly. That it is the indispensable duty of these colonies to the best of sovereigns, to the mother country, and to themselves, to endeavour by a loyal and dutiful address to his majesty, and humble applications to both houses of parliament, to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of parliament, whereby the jurisdiction of the admiralty is extended as aforesaid, and of the other late acts for the restriction of American commerce.

G.—Page 134.

Address to the King from the Convention at New York.

The Petition of the freeholders and other inhabitants of the Massachusetts Bay, Rhode Island, and Providence Plantations, New Jersey, Pennsylvania, the government of the counties of Newcastle, Kent, and Sussex, upon Delaware, province of Maryland.

Most humbly sheweth,

That the inhabitants of these colonies, unanimously devoted with the warmest sentiments of duty and affection to your majesty's sacred person and government, inviolably attached to the present happy establishment of the protestant succession in your illustrious house, and deeply sensible of your royal attention to their prosperity and happiness, humbly beg leave to approach the throne, by representing to your majesty, that these colonies were originally planted by subjects of the British crown, who, animated with the spirit of liberty, encouraged by your majesty's royal predecessors, and confiding in the publick faith for the enjoyment of all the rights and liberties essential to freedom, emigrated from their native country to this continent, and by their successful perseverance in the midst of innumerable dangers and difficulties, together with a profusion of their blood and treasure, have happily added these vast and valuable dominions to the empire of Great Britain. That for the enjoyment of these rights and liberties, several governments were early formed in the said colonies, with full power of legislation, agreeable to the principles of the English constitution.

That under those governments, these liberties, thus vested in their ancestors, and transmitted to their posterity, have been exercised and enjoyed, and by the inestimable blessings thereof (under the favour of Almighty God) the inhospitable deserts of America have been converted into flourishing countries; science, humanity, and the knowledge of divine truths, diffused through remote regions of ignorance, infidelity, and barbarism; the number of British subjects wonderfully increased, and the wealth and power of Great Britain proportionably augmented.

That by means of these settlements, and the unparalleled success of your majesty's arms, a foundation is now laid for rendering the British empire the most extensive and powerful of any recorded in

history. Our connection with this empire we esteem our greatest happiness and security, and humbly conceive it may be now so established by your royal wisdom, as to endure to the latest period of time; this, with most humble submission to your majesty, we apprehend will be most effectually accomplished, by fixing the pillars thereof on liberty and justice, and securing the inherent rights and liberties of your subjects here, upon the principles of the English constitution. To this constitution these two principles are essential, the right of your faithful subjects freely to grant to your majesty such aids as are required for the support of your government over them, and other publick exigencies, and trials by their peers; by the one they are secured from unreasonable impositions, and by the other from arbitrary decisions of the executive power.

The continuation of these liberties to the inhabitants of America we ardently implore, as absolutely necessary to unite the several parts of your wide extended dominions, in that harmony so essential to the preservation and happiness of the whole. Protected in these liberties, the emoluments Great Britain receives from us, however great at present, are inconsiderable, compared with those she has the fairest prospect of acquiring. By this protection she will for ever secure to herself the advantage of conveying to all Europe the merchandises which America furnishes, and of supplying, through the same channel, whatever is wanted from thence. Here opens a boundless source of wealth and naval strength; yet these immense advantages, by the abridgment of those invaluable rights and liberties by which our growth has been nourished, are in danger of being for ever lost, and our subordinate legislatures in effect rendered useless, by the late acts of parliament imposing duties and taxes on these colonies, and extending the jurisdiction of the courts of admiralty here beyond its ancient limits: statutes by which your majesty's commons in Great Britain undertake absolutely to dispose of the property of their fellow-subjects in America without their consent, and for the enforcing whereof they are subjected to the determination of a single judge, in a court unrestrained by the wise rules of the common law, the birthright of Englishmen, and the safeguard of their persons and properties.

The invaluable rights of taxing ourselves, and trial by our peers, of which we implore your majesty's protection, are not, we most humbly conceive, unconstitutional, but confirmed by the great charter of English liberty. On the first of these rights, the honourable the house of commons found their practice of originating money bills, a right enjoyed by the kingdom of Ireland, by the clergy of England, until relinquished by themselves, a right, in fine, which all other your majesty's English subjects, both within and without the realm, have hitherto enjoyed.

With hearts, therefore, impressed with the most indelible characters

racters of gratitude to your majesty, and to the memory of the kings of your illustrious house, whose reigns have been signally distinguished by their auspicious influence on the prosperity of the British dominions, and convinced by the most affecting proofs of your majesty's paternal love to all your people, however distant, and your unceasing and benevolent desires to promote their happiness, we most humbly beseech your majesty, that you will be graciously pleased to take into your royal consideration the distresses of your faithful subjects on this continent, and to lay the same before your majesty's parliament, and to afford them such relief, as in your royal wisdom their unhappy circumstances shall be judged to require.

H.—Page 184.

*Memorial to the House of Lords, from the Convention
at New York.*

The Memorial of, &c.

Most humbly sheweth,

THAT his majesty's liege subjects in his American colonies, though they acknowledge a due subordination to that august body the British parliament, are entitled, in the opinion of your memorialists, to all the inherent rights and liberties of the natives of Great Britain, and have, ever since the settlement of the said colonies, exercised those rights and liberties, as far as their local circumstances would permit.

That your memorialists humbly conceive one of the most essential rights of those colonies, which they have ever, till lately, uninterrupted enjoyed, to be trial by jury.

That your memorialists also humbly conceive another of these essential rights to be the exemption from all taxes but such as are imposed on the people by the several legislatures in these colonies, which right also they have till of late freely enjoyed.

But your memorialists humbly beg leave to represent to your lordships that the act for granting certain stamp duties in the British colonies in America, &c. fills his majesty's American subjects with the deepest concern, as it tends to deprive them of the two fundamental and invaluable rights and liberties above

mentioned ; and that several other late acts of parliament, which extend the jurisdiction and powers of courts of admiralty in the plantations beyond their limits in Great Britain, thereby make an unnecessary and unhappy distinction as to the modes of trial between us and our fellow-subjects there, by whom we never have been excelled in duty and loyalty to our sovereign.

That from the natural connection between Great Britain and America, the perpetual continuance of which your memorialists most ardently desire, they conceive that nothing can conduce more to the interest of both, than the colonists' free enjoyment of their rights and liberties, and an affectionate intercourse between Great Britain and them. But your memorialists (not waiving their claim to these rights, of which, with the most becoming veneration and deference to the wisdom and justice of your lordships, they apprehend they cannot reasonably be deprived) humbly represent, that from the peculiar circumstances of these colonies, the duties imposed by the aforesaid act, and several other late acts of parliament, are extremely grievous and burthensome ; and the payment of the said duties will very soon, for want of specie, become absolutely impracticable ; and that the restrictions on trade by the said acts will not only greatly distress the colonies, but must be extremely detrimental to the trade and true interest of Great Britain.

Your memorialists, therefore, impressed with a just sense of the unfortunate circumstances of the colonies, and the impending destructive consequences which must necessarily ensue from the execution of those acts, animated with the warmest sentiments of filial affection for their mother country, most earnestly and humbly entreat that your lordships will be pleased to hear their counsel in support of this memorial, and take the premises into your most serious consideration ; and that your lordships will also be thereupon pleased to pursue such measures for restoring the just rights and liberties of the colonies, and preserving them for ever inviolate, for redressing their present, and preventing future grievances, thereby promoting the united interest of Great Britain and America, as to your lordships, in your great wisdom, shall seem most conducive and effectual to that important end.

I.—Page 134.

*Petition to the House of Commons, from the Convention
at New York.*

The Petition of, &c.

Most humbly sheweth,

THAT the several late acts of parliament, imposing divers duties and taxes on the colonies, and laying the trade and commerce thereof under very burthensome restrictions, but above all, the act for granting and applying certain stamp duties, &c. in America, have filled them with the deepest concern and surprise; and they humbly conceive the execution of them will be attended with consequences very injurious to the commercial interest of Great Britain and her colonies, and must terminate in the eventual ruin of the latter.

Your petitioners, therefore, most ardently implore the attention of the honourable house to the united and dutiful representation of their circumstances, and to their earnest supplications for relief from those regulations which have already involved this continent in anxiety, confusion, and distress.

We most sincerely recognise our allegiance to the crown, and acknowledge all due subordination to the parliament of Great Britain, and shall always retain the most grateful sense of their assistance and protection. It is from and under the English constitution we derive all our civil and religious rights and liberties: we glory in being subjects of the best of kings, and having been born under the most perfect form of government; but it is with most ineffable and humiliating sorrow that we find ourselves, of late, deprived of the right of granting our own property for his majesty's service, to which our lives and fortunes are entirely devoted, and to which, on his royal requisitions, we have ever been ready to contribute to the utmost of our abilities.

We have also the misfortune to find that all the penalties and forfeitures mentioned in the stamp act, and in divers late acts of trade, extending to the plantations, are, at the election of the informer, recoverable in any court of admiralty in America. This, as the newly erected court of admiralty has a general jurisdiction over all British America, renders his majesty's subjects in these colonies liable to be carried, at an immense expense, from one end of the continent to the other.

It gives us also great pain to see a manifest distinction made therein between the subjects of our mother country, and those
in

in the colonies, in that the like penalties and forfeitures recoverable there only in his majesty's court of record, are made cognizable here by a court of admiralty: by these means we seem to be, in effect, unhappily deprived of two privileges essential to freedom, and which all Englishmen have ever considered as their best birthrights, that of being free from all taxes but such as they have consented to in person, or by their representatives, and of trial by their peers.

Your petitioners further shew, that the remote situation and other circumstances of the colonies, render it impracticable that they should be represented, but in their respective subordinate legislature; and they humbly conceive that the parliament, adhering strictly to the principles of the constitution, have never hitherto taxed any but those who were actually therein represented; for this reason, we humbly apprehend, they never have taxed Ireland, or any other of the subjects without the realm.

But were it ever so clear that the colonies might in law be reasonably deemed to be represented in the honourable house of commons, yet we conceive that very good reasons, from inconvenience, from the principles of true policy, and from the spirit of the British constitution, may be adduced to shew that it would be for the real interest of Great Britain, as well as her colonies, that the late regulations should be rescinded, and the several acts of parliament imposing duties and taxes on the colonies, and extending the jurisdiction of the courts of admiralty here beyond their ancient limits, should be repealed.

We shall not attempt a minute detail of all the reasons which the wisdom of the honourable house may suggest on this occasion, but would humbly submit the following particulars to their consideration.

That money is already become very scarce in these colonies, and is still decreasing, by the necessary exportation of specie from the continent for the discharge of our debts to British merchants.

That an immensely heavy debt is yet due from the colonies for British manufactures, and that they are still heavily burthened with taxes to discharge the arrearages due for aids granted by them in the late war.

That the balance of trade will ever be much against the colonies, and in favour of Great Britain, whilst we consume her manufactures, the demand for which must ever increase in proportion to the number of inhabitants settled here, with the means of purchasing them. We therefore humbly conceive it to be the interest of Great Britain to increase, rather than diminish those means; as the profits of all the trade of the colonies ultimately centre there to pay for her manufactures, as we are not allowed to purchase elsewhere; and by the consumption of which, at the advanced prices the British taxes oblige the makers and venders to set on them, we eventually contribute very largely to the revenue of the crown.

That

That from the nature of American business, the multiplicity of suits and papers used in matters of small value, in a country where freeholds are so minutely divided, and property so frequently transferred, a stamp duty must ever be very burthensome and unequal.

That it is extremely improbable, that the honourable house of commons should at all times be thoroughly acquainted with our condition, and all facts requisite to a just and equal taxation of the colonies.

It is also humbly submitted, whether there be not a material distinction, in reason and sound policy at least, between the necessary exercise of parliamentary jurisdiction in general acts for the amendment of the common law, and the regulation of trade and commerce through the whole empire, and the exercise of that jurisdiction by imposing taxes on the colonies.

That the several subordinate provincial legislatures have been moulded into forms as nearly resembling that of their mother country, as by his majesty's royal predecessors was thought convenient; and their legislatures seem to have been wisely and graciously established, that the subjects in the colonies might, under the due administration thereof, enjoy the happy fruits of the British government, which in their present circumstances they cannot be so fully and clearly availed of any other way; under these forms of government we and our ancestors have been born or settled, and have had our lives, liberties, and properties protected. The people here, as every where else, retain a great fondness for their old customs and usages; and we trust that his majesty's service, and the interest of the nation, so far from being obstructed, have been vastly promoted by the provincial legislatures.

That we esteem our connections with, and dependence on Great Britain, as one of our greatest blessings, and apprehend the latter will appear to be sufficiently secure, when it is considered that the inhabitants in the colonies have the most unbounded affection for his majesty's person, family, and government, as well as for the mother country, and that their subordination to the parliament is universally acknowledged.

We therefore most humbly entreat, that the honourable house would be pleased to hear our counsel in support of this petition, and take our distressed and deplorable case into their serious consideration; and that the acts and clauses of acts, so grievously restraining our trade and commerce, imposing duties and taxes on our property, and extending the jurisdiction of the court of admiralty beyond its ancient limits, may be repealed; or that the honourable house would otherwise relieve your petitioners, as in your great wisdom and goodness shall seem meet.

J.—Page 192.

Address of the Inhabitants of the town of Boston, to Governor Bernard, after the seizure of Mr. Hancock's vessel from Madeira. June 14, 1768.

PROVINCE OF MASSACHUSETTS BAY.

To his Excellency Francis Bernard, esq., governor and commander-in-chief in and over the said province, and vice-admiral of the same,—

The inhabitants of the town of Boston, in town meeting legally assembled,

Humbly shew,

THAT your petitioners consider the British constitution as the basis of their safety and happiness. By that, is established, no man shall be governed by laws, nor taxed, but by himself, or representative, legally and fairly chosen, and to which he does not give his own consent. In open violation of these fundamental rights of Britons, laws and taxes are imposed on us, to which we not only have not given our consent, but against which we most firmly have remonstrated. Dutiful petitions have been preferred to our most gracious sovereign, which (though to the great consternation of the people, we now learn have been cruelly and insidiously prevented reaching the royal presence,) we have waited to receive a gracious answer to, with the greatest attention to the publick peace, until we find ourselves invaded with an armed force, seizing, impressing, and imprisoning the persons of our fellow-subjects, contrary to express acts of parliament.

Menaces have been thrown out, fit only for barbarians, which already affect us in the most sensible manner, and threaten us with famine and desolation, as all navigation is obstructed, upon which alone our whole support depends; and the town is at this crisis in a situation nearly such, as if war was formally declared against it.

To contend with our parent state, is, in our idea, the most shocking and dreadful extremity; but tamely to relinquish the only security we and our posterity retain of the enjoyment of our lives and properties, without one struggle, is so humiliating and base, that we cannot support the reflection. We apprehend, sir, that it is at your option, in your power, and we would hope in your inclination,

inclination, to prevent this distressed and justly incensed people from effecting too much, and from the shame and reproach of attempting too little.

As the board of customs have thought fit, of their own motion, to relinquish the exercise of their commission here, and as we cannot but hope, that being convinced of the impropriety and injustice of the appointment of a board with such enormous powers, and the inevitable destruction which would ensue from the exercise of their office, will never reassume it, we flatter ourselves your excellency will, in tenderness to this people, use the best means in your power to remove the other grievance we so justly complain of, and issue your immediate order to the commander of his majesty's ship Romney, to remove from this harbour, till we shall be ascertained of the success of our application.

And your petitioners, &c.

K.—Page 193.

Instructions of the town of Boston to their Representatives, on the same occasion. June 17, 1768.

To the Honourable James Otis, and Thomas Cushing, Esqrs;
Mr. Samuel Adams, and John Hancock, Esq.

Gentlemen,

AFTER the repeal of the late American stamp act, we were happy in the pleasing prospect of a restoration of that tranquillity and unanimity among ourselves, and that harmony and affection between our parent country and us, which had generally subsisted before that detestable act. But with the utmost grief and concern, we find that we flattered ourselves too soon, and that the root of bitterness is still alive. The principle on which that act was founded continues in full force, and a revenue is still demanded from America.

We have the mortification to observe one act of parliament after another, passed for the express purpose of raising a revenue from us; to see our money continually collecting from us, without our consent, by an authority in the constitution, of which we have no share, and over which we have no kind of influence or control; to see the little circulating cash that remained among us for the support of our trade, from time to time transmitted to a distant country,

country, never to return, or, what in our estimation is worse, if possible, appropriated to the maintenance of swarms of officers and pensioners in idleness and luxury, whose example has a tendency to corrupt our morals, and whose arbitrary dispositions will trample on our rights.

Under all these misfortunes and afflictions, however, it is our fixed resolution to maintain our loyalty and duty to our most gracious sovereign, a reverence and due subordination to the British parliament, as the supreme legislative in all cases of necessity, for the preservation of the whole empire, and our cordial and sincere affection for our parent country, and to use our utmost endeavour for the preservation of the peace and order among ourselves, waiting with anxious expectation for a favourable answer to the petitions and solicitations of this continent for relief: at the same time, it is our unalterable resolution, at all times, to assert and vindicate our dear and invaluable rights and liberties, at the utmost hazard of our lives and fortunes; and we have a full and rational confidence that no designs formed against them will ever prosper.

That such designs have been formed, and are still in being, we have reason to apprehend. A multitude of placemen and pensioners, and an enormous train of underlings and dependants, all novel in this country, we have seen already. Their imperious tempers, their rash, inconsiderate, and weak behaviour, are well known.

In this situation of affairs, several armed vessels, and among the rest, his majesty's ship of war, the *Romney*, have appeared in our harbour; and the last, as we believe, by the express application of the board of commissioners, with design to overawe and terrify the inhabitants of this town into base compliances, and unlimited submission, has been anchored within a cable's length of the wharfs.

But, passing by other irregularities, we are assured that the last alarming act of that ship, viz., the violent, and, in our opinion, illegal seizure of a vessel lying at a wharf, and cutting off her masts, and removing her with an armed force in a hostile manner, under the protection of the king's ships, without any probable cause of seizure that we know of, or indeed any cause that has yet been made known, no libel or prosecution whatever having yet been instituted against her, was by the express order, or request in writing, of the board of commissioners to the commander of that ship. In addition to all this, we are continually alarmed with rumours and reports of new revenue acts to be passed, new importations of officers and pensioners to suck the life-blood of the body politick while it is streaming from the veins; fresh arrival of ships of war, to be a still severer restraint upon our trade; and the arrival of a military force to dragoon us into passive obedience; orders and requisitions transmitted to New York, Halifax, and

and to England, for regiments and troops to preserve the publick peace.

Under the distresses arising from this state of things, with the highest confidence in your integrity, abilities, and fortitude, you will exert yourselves, gentlemen, on this occasion, that nothing may be left undone that may conduce to our relief; and, in particular, we recommend it to your consideration and discretion, in the first place, to endeavour that impresses of all kinds may, if possible, be prevented. There is an act of parliament in being, which has never been repealed, for the encouragement of the trade to America; we mean, by the 6th Anne, chap. 37, section 9, it is enacted, *That no mariner or other person who shall serve on board, or be retained to serve on board any privateer, or trading ship or vessel, that shall be employed in any part of America, nor any mariner, or other person, being on shore in any part thereof, shall be liable to be impressed, or taken away by any officer or officers, of or belonging to any of her majesty's ships of war, empowered by the lord high admiral, or any other person whatsoever, unless such mariner shall have before deserted from such ship of war belonging to her majesty, at any time after the 14th day of February, 1707, upon pain that any officer or officers so impressing or taking away, or causing to be impressed or taken away, any mariner or other person, contrary to the tenor and true meaning of this act, shall forfeit to the master, or owner or owners of any such ship or vessel, twenty pounds for every man he or they shall so impress or take, to be recovered, with full costs of suit, in any part of her majesty's dominions.* So that any impresses of any mariner, from any vessel whatever, appear to be in direct violation of an act of parliament. In the next place, it is our desire that you inquire and use your endeavours to promote a parliamentary inquiry for the authors and propagators of such alarming rumours and reports as we have mentioned before, and whether the commissioners, or any other persons whatsoever, have really wrote or solicited for troops to be sent here from New York, Halifax, England, or elsewhere, and for what end; and that you forward, if you think it expedient, in the house of representatives, resolutions, that every such person who shall solicit or promote the importation of troops at this time, is an enemy to this town and province, and a disturber of the peace and good order of both.

L.—Page 205.

*Circular Letter from the Select Men of Boston, to the
Select Men of several towns in the Province, calling a
Convention at Boston, on September 22, 1768.*

Gentlemen,

Boston, Sept. 14.

YOU are already too well acquainted with the melancholy and very alarming circumstances to which this province, as well as America in general, is now reduced. Taxes, equally detrimental to the commercial interest of the parent country and her colonies, are imposed upon the people, without their consent; taxes designed for the support of civil government in the colonies, in a manner clearly unconstitutional, and contrary to that in which, till of late, government has been supported, by the free gift of the people in American assemblies or parliaments, as also for the maintenance of a large standing army, not for the defence of the newly-acquired territories, but for the old colonies, and in time of peace. The decent, humble, and truly loyal applications and petitions from the representatives of this province, for the redress of these heavy and very threatening grievances, have hitherto been ineffectual, being assured from authentick intelligence, that they have not yet reached the royal ear: the only effect of transmitting these applications, hitherto perceivable, has been a mandate from one of his majesty's secretaries of state to the governor of this province, to dissolve the general assembly, merely because the late house of representatives refused to rescind a resolution of a former house, which implied nothing more than a right in the American subjects to unite in humble and dutiful petitions to their gracious sovereign, when they found themselves aggrieved: this is a right naturally inherent in every man, and expressly recognised at the glorious revolution, as the birth-right of an Englishman.

This dissolution you are sensible has taken place; the governor has publickly and repeatedly declared that he cannot call another assembly; and the secretary of state for the American department, in one of his letters communicated to the late house, has been pleased to say, "proper care will be taken for the support of the dignity of government;" the meaning of which is too plain to be misunderstood.

The concern and perplexity into which these things have
thrown

thrown the people, have been greatly aggravated by a late declaration of his excellency governor Bernard, that one or more regiments may soon be expected in this province.

The design of these troops is every one's apprehension; nothing short of enforcing, by military power, the execution of acts of parliament, in the forming of which the colonies have not, and cannot have any constitutional influence. This is one of the greatest distresses to which a free people can be reduced.

The town which we have the honour to serve, have taken these things at their late meeting into their most serious consideration: and as there is in the minds of many a prevailing apprehension of an approaching war with France, they have passed the several votes, which we transmit to you, desiring that they may be immediately laid before the town, whose prudentials are in your care, at a legal meeting, for their candid and particular attention.

Deprived of the councils of a general assembly in this dark and difficult season, the loyal people of this province will, we are persuaded, immediately perceive the propriety and utility of the proposed committee of convention; and the sound and wholesome advice that may be expected from a number of gentlemen chosen by themselves, and in whom they may repose the greatest confidence, must tend to the real service of our gracious sovereign, and the welfare of his subjects in this province, and may happily prevent any sudden and unconnected measures, which in their present anxiety, and even agony of mind, they may be in danger of falling into.

As it is of importance that the convention should meet as soon as may be, so early a day as the 22d of this instant September has been proposed for that purpose—and it is hoped the remotest towns will by that time, or as soon after as conveniently may be, return their respective committees.

Not doubting but that you are equally concerned with us, and our fellow-citizens, for the preservation of our invaluable rights, and for the general happiness of our country, and that you are disposed, with equal ardour, to exert yourselves in every constitutional way for so glorious a purpose.

Signed by the select men.

M.—Page 233.

*Resolves, and Address to the King, of the House of
Burgesses in Virginia. May 16, 1769.*

Resolved, nem. con.—I. THAT the sole right of imposing taxes on the inhabitants of this his majesty's colony and dominion of Virginia is now, and ever hath been, legally and constitutionally vested in the house of burgesses, lawfully convened according to the ancient and established practice, with the consent of the council, and of his majesty the king of Great Britain, or his governor for the time being.

II. That it is the undoubted privilege of the inhabitants of this colony, to petition their sovereign for redress of grievances; and that it is lawful and expedient to procure the concurrence of his majesty's other colonies in dutiful addresses, praying the royal interposition in favour of the violated rights of America.

III. That all trials for treason, misprision of treason, or for any felony or crime whatsoever committed and done in this his majesty's said colony and dominion by any person or persons residing therein, ought of right to be held and conducted in and before his majesty's courts held within his said colony, according to the fixed and known course of proceeding; and that the seizing any person or persons residing in this colony, suspected of any crime whatsoever committed therein, and sending such person or persons to places beyond the sea to be tried, is highly derogatory of the rights of British subjects, as thereby the inestimable privilege of being tried by a jury from the vicinage, as well as the liberty of summoning and producing witnesses on such trial, will be taken away from the party accused.

IV. That an humble, dutiful, and loyal address be presented to his majesty, to assure him of our inviolable attachment to his sacred person and government, and to beseech his royal interposition, as the father of all his people, however remote from the seat of his empire, to quiet the minds of his loyal subjects of this colony, and to avert from them those dangers and miseries which will ensue from the seizing and carrying beyond sea any person residing in America, suspected of any crime whatsoever, to be tried in any other manner than by the ancient and long established course of proceeding.

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The following order is likewise in their Journal of that date.

Ordered, That the speaker of this house do transmit, without delay, to the speakers of the several houses of assembly on this continent, a copy of the resolutions now agreed to by this house, requesting their concurrence therein.

The following is an address to his Majesty, in their Journal of the day after.

To the King's most excellent Majesty.

The humble address of his dutiful and loyal subjects the house of burgesses of his majesty's ancient colony of Virginia, met in general assembly.

May it please your Majesty,

We your majesty's most loyal, dutiful, and affectionate subjects, the house of burgesses of this your majesty's ancient colony of Virginia, now met in general assembly, beg leave, in the humblest manner, to assure your majesty that your faithful subjects of this colony, ever distinguished by their loyalty and firm attachment to your majesty and your royal ancestors, far from countenancing traitors, treasons, or misprision of treasons, are ready at any time to sacrifice our lives and fortunes in defence of your majesty's sacred person and government.

It is with the deepest concern and most heartfelt grief, that your majesty's dutiful subjects of this colony find that their loyalty hath been traduced, and that those measures which a just regard for the British constitution (dearer to them than life) made necessary duties, have been misrepresented as rebellious attacks upon your majesty's government.

When we consider that, by the established laws and constitution of this colony, the most ample provision is made for apprehending and punishing all those who shall dare to engage in any treasonable practices against your majesty, or disturb the tranquillity of government, we cannot without horror think of the new, unusual, and permit us, with all humility, to add, unconstitutional and illegal mode, recommended to your majesty, of seizing and carrying beyond sea the inhabitants of America suspected of any crime, and of trying such persons in any other manner than by the ancient and long established course of proceeding; for how truly deplorable must be the case of a wretched American, who, having incurred the displeasure of any one in power, is dragged from his native home and his dearest domestick connections, thrown into a prison, not to await his trial before a court, jury, or judges, from a knowledge of whom he is encouraged to hope for speedy justice, but to exchange his imprisonment in his own country for fetters among strangers: conveyed to a distant land, where no friend, no relation,

relation, will alleviate his distresses or minister to his necessities, and where no witness can be found to testify his innocence, shunned by the reputable and honest, and consigned to the society and converse of the wretched and the abandoned, he can only pray that he may soon end his misery with his life.

Truly alarmed at the fatal tendency of these pernicious counsels, and with hearts filled with anguish by such dangerous invasions of our dearest privileges, we presume to prostrate ourselves at the foot of your royal throne, beseeching your majesty, as our king and father, to avert from your faithful and loyal subjects of America these miseries which must necessarily be the consequence of such measures.

After expressing our firm confidence in your royal wisdom and goodness, permit us to assure your majesty that the most fervent prayers of your people of this colony are daily addressed to the Almighty, that your majesty's reign may be long and prosperous over Great Britain and all your dominions; and that after death your majesty may taste the fullest fruition of eternal bliss, and that a descendant of your illustrious house may reign over the extended British empire until time shall be no more.

The following order follows the address.

Ordered, That Mr. Speaker do transmit the said address to the agent for this colony, with directions to cause the same to be presented to his most excellent Majesty, and afterwards to be printed and published in the English papers.

N.—Page 234.

Message to Governor Bernard from the Assembly, on their privileges, and praying the removal of the troops. May 31, 1769.

May it please your Excellency,

THE great and general court of assembly of this province, being once more convened by virtue of the authority vested in you by his majesty, and according to the royal charter, the house of representatives think it their indispensable duty, under the present aspect of affairs in the province, on their part to claim that constitutional freedom which is the right of this assembly, and is of equal importance with its existence.

We take this opportunity to assure your excellency, that it is the firm resolution of this house to promote to the utmost of their power, the welfare of the subject, and to support his majesty's government within this jurisdiction; to make a thorough inquiry into the grievances of the people, and have them redressed; to amend, strengthen, and preserve the laws of the land; to reform illegal proceedings in administration, and support the public liberty. These are the great ends for which this court is assembled.

A resolution so important demands a parliamentary freedom in the debates of this assembly: we are therefore constrained, thus early to demonstrate to your excellency, that an armament by sea and land investing this metropolis, and a military guard with cannon pointed at the very door of the state-house, where this assembly is held, is inconsistent with that dignity, as well as that freedom with which we have a right to deliberate, consult, and determine.

The experience of ages is sufficient to convince, that the military power is ever dangerous, and subversive of a free constitution.

The history of our own nation affords instances of parliaments which have been led into mean and destructive compliances, even to the surrendering their share in the supreme legislative power, through the awe of standing armies.

His majesty's council of the province have publicly declared, that the military aid is unnecessary for the support of civil authority in the colony; nor can we conceive that his majesty's service

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requires a fleet and army here, in this time of the most profound peace.

We have a right to expect that your excellency will, as his majesty's representative, give the necessary and effectual orders for the removal of the abovementioned forces, by sea and land, out of this port, and the gate of the city, during the session of the said assembly.

O.—Page 242.

Resolves of the Assembly, that no laws imposing taxes, and made by any authority in which the people had not their representatives, could be obligatory, &c. &c. July 8, 1769.

THE general assembly of this his majesty's province of Massachusetts Bay, convened by his majesty's authority, and by virtue of his writ issued by his excellency the governor, under the great seal of the province, thinking it their duty at all times to testify their loyalty to his majesty, as well as their inviolable regard to their own and their constituents' rights, liberties, and privileges, do pass the following Resolutions to be entered on their journal.

Resolved,—That this house do, and ever will, bear the firmest allegiance to our rightful sovereign king George the third, and are ever ready with their lives and fortunes to defend his majesty's person, family, crown, and dignity.

Resolved, as the opinion of this house,—That the sole right of imposing taxes on the inhabitants of this his majesty's colony of the Massachusetts Bay, is now and ever hath been legally and constitutionally vested in the house of representatives, lawfully convened according to the ancient and established practice, with the consent of the council, and of his majesty the king of Great Britain, or his governor for the time being.

Resolved, as the opinion of this house,—That it is the indubitable right of the subject in general, and consequently of the colonists, jointly, or severally, to petition the king for redress of grievances, and that it is lawful, whenever they think it expedient, to confer with each other, in order to procure a joint concurrence in dutiful addresses for relief from common burthens.

Resolved,—That governor Bernard, by a wanton and precipitate dissolution of the last year's assembly, and refusing to call

call another, though repeatedly requested by the people, acted against the spirit of a free constitution; and if such procedure be lawful, it may be in his power, whenever he pleases, to render himself absolute.

Resolved,—That a general discontent on account of the revenue acts, an expectation of the sudden arrival of military power to enforce the execution of those acts, an apprehension of the troops being quartered upon the inhabitants, when our petitions were not permitted to reach the royal ear, the general court at such a juncture dissolved, the governor refusing to call a new one, and the people reduced almost to a state of despair, rendered it highly expedient and necessary for the people to convene by their committees, associate, consult, and advise the best means to promote peace and good order, to present their united complaints to the throne, and jointly to pray for the royal interposition in favour of their violated rights; nor can this procedure possibly be illegal, as they expressly disclaimed all governmental acts.

Resolved, as the opinion of this house,—That governor Bernard in his letters to Lord Hillsborough, his majesty's secretary of state, has given a false and highly injurious representation of the conduct of his majesty's truly loyal and faithful council of this colony, and of the magistrates, overseers of the poor, and inhabitants of the town of Boston, tending to bring on those respectable bodies of men, particularly on some individuals, the unmerited displeasure of our gracious sovereign, to introduce a military government, and to mislead both houses of parliament into such severe resolutions, as a true, just, and candid state of facts must have prevented.

Resolved,—That governor Bernard, in the letters before mentioned, by falsely representing that it was become "necessary the king should have the council-chamber in his own hands, and should be enabled by parliament to supersede, by order in his privy council, commissions granted in his name and under his seal, throughout the colonies," has discovered his enmity to the true spirit of the British constitution, to the liberties of the colonies; and has struck at the root of some of the most invaluable constitutional and charter rights of this province: the perfidy of which, at the very time he professed himself a warm friend to the charter, is altogether unparalleled by any in his station, and ought never to be forgotten.

Resolved,—That the establishment of a standing army in this colony, in a time of peace, without the consent of the general assembly of the same, is an invasion of the natural rights of the people, as well as of those which they claim as free-born Englishmen, confirmed by Magna Charta, the Bill of rights as settled at the revolution, and by the Charter of this province.

Resolved,—That a standing army is not known as a part of the

the British constitution in any of the king's dominions; and every attempt to establish it has been esteemed a dangerous innovation, manifestly tending to enslave the people.

Resolved,—That the sending an armed force into this colony, under a pretence of aiding and assisting the civil authority, is an attempt to establish a standing army here without our consent—is highly dangerous to this people—is unprecedented, and unconstitutional.

Resolved,—That whoever has represented to his majesty's ministers, that the people of this colony in general, or the town of Boston in particular, were in such a state of disobedience and disorder, as to require a fleet and army to be sent here, to aid the civil magistrate, is an avowed enemy to this colony, and to the nation in general—and has by such misrepresentations endeavoured to destroy the liberty of the subject here, and that mutual union and harmony between Great Britain and the colonies, so necessary for the welfare of both.

Resolved, as the opinion of this house,—That the misrepresentations of the state of this colony, transmitted by governor Bernard to his majesty's ministers, have been the means of procuring the military force now quartered in the town of Boston.

Resolved,—That whoever gave order for quartering even common soldiers and camp-women in the court house in Boston, and in the representatives' chamber, where some of the principal archives of the government had been usually deposited, making a barrack of the same, placing a main guard with cannon pointed near the said house, and sentinels at the door, *designed* a high insult, and a triumphant indication that the military power was master of the whole legislative.

Whereas his excellency general Gage, in his letter to lord Hillsborough of October the 31st, amongst other exceptionable things, expressed himself in the following words: "From what has been said, your lordship will conclude, that there is no government in Boston: in truth there is very little at present, and the constitution of this province leans so much to the side of democracy, that the governor has not the power to remedy the disorders that happen in it."

Resolved, as the opinion of this house,—That his excellency general Gage, in this and other assertions, has rashly and impertinently intermeddled with the civil affairs of this province, which are altogether out of his department, and of the internal police, of which, by his letter, if not altogether his own, he has yet betrayed a degree of ignorance equal to the malice of the author.

With respect to the nature of our government, this house is of opinion, that the wisdom of that great prince, William the third, who gave the charter, aided by an able ministry, and men thoroughly versed in the English constitution and law, and the happy effects

effects derived from it to the nation, as well as this colony, should have placed it above the reprehension of the general, and led him to inquire whether the disorders complained of have not arisen from an arbitrary disposition in the government, rather than from too great a spirit of democracy in the constitution. And this house cannot but express their deep concern, that too many in power, at home and abroad, so clearly avow, not only in private conversation, but in their public conduct, the most rancorous enmity against the *free part* of the British constitution, and are indefatigable in their endeavours to render the monarchy absolute, and the administration arbitrary, in every part of the British empire.

Resolved,—That this house, after the most careful inquiry, have not found an instance of the course of justice being interrupted by violence, except by a rescue committed by Samuel Fellows, an officer in the navy, and, by the appointment of the commissioners, an officer also in the customs; nor of a magistrate's refusing to inquire into, or redress any injury complained of; while it is notorious to all the world, that even such acts of parliament as by the whole continent are deemed highly oppressive, have never been opposed with violence, and the duties imposed, and rigorously exacted, have been punctually paid.

Resolved,—That the frequent entries of *Noli Prosequi* by the attorney and advocate general, in cases favourable to the liberty of the subject, and rigorous prosecutions by information and otherwise, in those in favour of power, are daring breaches of trust, and insupportable grievances on the people.

Resolved, as the opinion of this house,—That the late extension of the power of courts of admiralty in America is highly dangerous and alarming; especially as the judges of the courts of common law, the alone check upon their inordinate power, do not hold their places during their good behaviour: and those who have falsely represented to his majesty's ministers that no dependence could be had on juries in America, and that there was a necessity of extending the power of the courts of admiralty there so far, as to deprive the subject of the inestimable privilege of a trial by a jury, and to render the said courts of admiralty uncontrollable by the ancient common law of the land, are avowed enemies to the constitution, and manifestly intended to introduce and establish a system of insupportable tyranny in America.

Resolved, as the opinion of this house,—That the constituting a board of commissioners of customs in America is an unnecessary burthen upon the trade of these colonies, and that the unlimited power the said commissioners are invested with, of making appointments, and paying the appointees what sums they please, unavoidably tends so enormously to increase the number of placemen and pensioners, as to become justly alarming, and formidable to the liberties of the people.

Resolved,—That it is the opinion of this house, "That all trials

trials for treason, misprision of treason, or for any felony or crime whatsoever, committed or done in this his majesty's colony by any person or persons residing therein, ought of right to be had and conducted in and before his majesty's courts held within the said colony, according to the fixed and known course of proceedings; and that the seizing any person or persons residing in this colony, suspected of any crime whatsoever, committed therein, and sending such person or persons to places beyond the sea, to be tried, is highly derogatory of the rights of British subjects; as thereby the inestimable privilege of being tried by a jury from the vicinage, as well as the liberty of summoning and producing witnesses on such trial, will be taken away from the party accused."

In the house of representatives.

A true copy.

Attest.

SAM. ADAMS, Clerk of the house.

P.—Page 284.

Answer of the Assembly to Lieutenant-Governor Hutchinson's message on a riot at Gloucester. April 24, 1770.

May it please your Honour,

THE house of representatives have taken into due consideration your message of the 7th inst., with the papers laid before them by the secretary, agreeable to your direction.

We assure your honour that we have the utmost abhorrence of all disorderly and riotous transactions: it is the disposition as well as the duty of this house, to take the most effectual measures to discountenance them, and to strengthen and encourage the executive officers in the exercise of all their lawful powers of government. Nothing, therefore, shall be wanting on our part for the promoting of these purposes, whenever any further steps shall appear to us to be necessary. At present it is the opinion of the house, that the laws now in being, duly executed, would be fully sufficient; and to add to the severity of the provision made by them, without any apparent and very urgent necessity, might put into the hands of the civil magistrate a power that would be dangerous to the rights and liberties of the people.

When complaints are made of riots and tumults, it is the wisdom

dom of government, and it becomes the representatives of the people especially, to inquire into the real causes of them: if they arise from oppression, as is frequently the case, a thorough redress of grievances will remove the cause, and probably put an end to the complaint. It may justly be said of the people of this province, that they seldom, if ever, have assembled in a tumultuous manner, unless they have been oppressed: it cannot be expected that a people accustomed to the freedom of the English constitution will be patient, while they are under the hand of tyranny and arbitrary power; they will discover their resentment in a manner which will naturally displease their oppressors; and in such a case the severest laws and most rigorous execution will be to little purpose. The most effectual method to restore tranquillity would be to remove their burdens, and to punish all those who have been the procurers of their oppression.

Your honour in your message has pointed us to an instance, which you are pleased to call "a very disorderly and riotous transaction in the town of Gloucester:" but we cannot think it consistent with the justice of this house, to come into measures which may imply a censure upon individuals, much less upon a community hitherto unimpeached in point of good order: or even to form any judgment upon the matter, until more light shall appear than the papers accompanying your message afford. The house cannot easily conceive what should determine your honour, so particularly to recommend this instance to the consideration of the assembly, while others of a much more heinous nature and dangerous tendency have passed altogether unnoticed in your message: your having received the information while the general court is sitting, cannot alter its nature and importance, or render it more or less necessary to be considered by the legislature: the instance, admitting it to be truly represented in all its aggravating circumstances, certainly cannot be more threatening to government than those enormities which have been notoriously committed by the soldiery of late, and, in many instances, have strangely escaped punishment, though repeated more than a second time, and in defiance of the laws and authority of government.

A military force, if posted among the people without their express consent, is itself one of the greatest grievances, and threatens the total subversion of a free constitution; much more, if designed to execute a system of corrupt and arbitrary power, and even to exterminate the liberties of the country. The bill of rights, passed immediately after the revolution, expressly declares, that "the raising and keeping a standing army within the kingdom in a time of peace, without the consent of parliament, is against law:" and we take this occasion to say with freedom, that the raising and keeping a standing army within this province in a time of peace, without the consent of the general assembly, is equally against law. Yet we have seen a standing army procured, posted,

posted, and kept within this province, in a time of profound peace, not only without the consent of the people, but against the remonstrances of both houses of assembly. Such a standing army must be designed to subjugate the people to arbitrary measures; it is a most violent infraction of their natural and constitutional rights; it is an unlawful assembly, of all others the most dangerous and alarming; and every instance of its actually restraining the liberty of any individual, is a crime which infinitely exceeds what the law intends by a riot. Surely then your honour cannot think this house can descend to the consideration of matters comparatively trifling, while the capital of the province has so lately been in a state of actual imprisonment, and the government itself is under duress.

The fatal effects which will for ever attend the keeping a standing army within a civil government have been severely felt in this province; they landed in a hostile manner, and with all the ensigns of triumph; and your honour must well remember that they early invested the manufactory-house in Boston, a capacious building, occupied by a number of families, whom they besieged and imprisoned. The extraordinary endeavours of the chief justice of the province to procure the admission of troops into that house, in a manner plainly against law, will not easily be erased from the minds of this people. Surely your honour could not be so fond of a military establishment, as willingly to interpose in a matter which might possibly come before you as a judge: to what else can such astonishing conduct be imputed, unless to a sudden surprise and the terror of military power in the chief justice of the province, which evidently appeared to have also arrested the *inferior* magistrate.

We shall not enlarge on the multiplied outrages committed by this unlawful assembly, in frequently assailing his majesty's peaceable and loyal subjects; in beating and wounding the magistrate when in the execution of his office; in rescuing prisoners out of the hand of justice; and finally, in perpetrating the most horrid slaughter of a number of inhabitants, but a few days before the sitting of this assembly, which your honour must undoubtedly have heard of: but not the least notice of these outrageous offences has been taken; nor can we find the most distant hint of the late inhuman and barbarous actions, either in your speech at the opening of the present session, or even in this message to both houses. These violences so frequently committed, added to the most rigorous and oppressive prosecutions carried on by the officers of the crown against the subjects, grounded upon unconstitutional acts, and in the courts of admiralty, uncontrolled by the courts of common law, have been justly alarming to the people. The disorder which your honour so earnestly recommends to the consideration of the assembly, very probably took its rise from such provocations; the use, therefore, which we shall make

make of the information in your message, shall be to inquire into the grounds of the people's uneasiness, and to seek a radical redress of their grievances. Indeed it is natural to expect, that while the terror of arms continues in the province, the laws will be in some degree silent; but when the channels of justice shall be again opened, and the law can be heard, the person who has complained to your honour, if he has truly represented his case, will have his remedy. We yet entertain hopes, that the military power, so grievous to the people, will soon be removed from the province, to stations where it may better answer the design for which it was originally raised; till then we have nothing to expect, but that tyranny and confusion will still prevail, in defiance of the law of the land, and the just and constitutional authority of government.

We cannot avoid, before we conclude, to express the deepest concern, that while the people are loudly complaining of intolerable grievances, the general assembly itself has just reason to remonstrate at violent and repeated infringements of their own constitutional rights. In order to avoid the most flagrant impropriety of its being kept in a garrisoned town, it was, the last session, as it were driven from its ancient and legal seat; and even now it is held in this place, at a distance from its offices and records, and subject to the greatest inconveniences, without any necessity that we can conceive, or the least apparent reason. These alarming considerations have awakened and fixed our attention; and your honour cannot think we can very particularly attend to things of lesser moment, within the jurisdiction of the executive courts, at a time when, in faithfulness to our constituents, our minds are necessarily employed in matters which concern the very being of the constitution.

Q.—Page 286.

Speech of Lieutenant-Governor Hutchinson to the Assembly, at their dissolution, April 26, 1770.

Gentlemen of the House of Representatives,
ON the 7th instant, I received a letter from James Davis, esq., a justice of peace for the county of Essex, informing me of a riot in the town of Gloucester, and of a high-handed and cruel assault and battery upon one Jesse Savil. This letter was accompanied with

with a petition from the said Jesse Savil, and another petition from several of the inhabitants of Gloucester, complaining of this riot; all which I laid before the council, for their advice. The council, being informed that some of the persons complained of had been convicted of the like offence in June last, at the superior court held at Ipswich, advised me to lay the papers before the house of representatives. The secretary carried them down, and I sent a short message to you at the same time. Had you passed over this message without any notice, or had you only signified to me, that you thought the laws in being sufficient for preventing riots, you would have heard nothing more from me upon the subject; but, under colour of answering my message, you have sent me a long remonstrance, a very small part of which can with any propriety be said to be an answer to the message I sent you. You charge me with endeavouring, as chief justice in the year 1768, to procure the admission of troops into the manufactory-house, *in a manner plainly against law*. This is a heavy charge, but it is highly injurious, and without the least foundation. As I am informed that the clerk of the house has already furnished one of the printers with a copy of your remonstrance, I am obliged, in order to prevent or remove the obloquy which must otherwise lie upon me, to relate the circumstances of the affair you refer to. The governor had for some days been endeavouring to prevail on the council to join with him in providing quarters for the troops: at length, the council advised that a house belonging to the province should be cleared, in part whereof one Mr. Brown remained a tenant at sufferance, and into other parts whereof, certain persons, some of them of bad fame, had intruded. The governor had been informed that these people had been instigated to keep possession of the house by force, notwithstanding the advice of council. On Wednesday the 19th of October, he desired me to go to the house and acquaint the people with the vote or advice of council, and to warn them of the consequences of their refusal to conform to it; and he said he thought it probable they might be prevailed on to remove, and all further trouble would be prevented. The sheriff was directed to attend me. I went and acquainted Mr. Brown with the determination of the governor and council, and told him that, in my opinion, they had the authority of government, in the recess of the general court, to direct in what manner the house should be improved, and advised and required him to remove without giving any further trouble. He replied, that without a vote of the whole general court, he would not quit the house. I told him he made himself liable for the damage which must be caused by his refusal, and he and his abettors must answer for the consequences. I remember that two persons were in the house, and, whilst I was speaking to Mr. Brown, came into the yard. One of these persons, whose name I afterwards found to be Young, inserting himself
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in the business, I asked him what concern he had in the affair. His reply was, that he came there as a witness. Nothing material passed further, nor was anything said of my appearing as chief justice. I returned to the governor, and informed him of the refusal of the people to quit the house; and upon his asking my opinion what was the next proper step, I acquainted him that the superior court was to be held at Cambridge, the Tuesday following, and that I thought it advisable to let the affair rest, and I would then consult with the other justices of the court upon it. I supposed it would rest accordingly, and went the same day to my house in the country, where I remained until Friday, when I came again to town, and then was first informed that the sheriff had entered the house by force. I do not remember any sort of attempt by the sheriff to take possession of the house by force, while I was present. Your message is drawn in such a manner as to lead the reader to think, that what you call the besieging and imprisoning these families in the manufactory-house, and my appearing there with the sheriff, were parts of one and the same action, and that the latter preceded the former. The least I can say is, that it was incautious and unkind in you to receive and suffer to be published for truth, upon such slight evidence, what most certainly is not true, and to charge me with illegality, when no part of my conduct upon that occasion was illegal, or in any degree unwarrantable or out of character.

Your examining into my actions before I came to the chair, must raise a very strong presumption that you have nothing material to allege against me since that time; for my *nonfesance* in not laying before you facts notorious throughout the province, and into which a due inquiry was making in a regular way, can never justly be imputed to me as a fault; and though you profess your dislike of sitting at Cambridge, yet when you consider, that I can see nothing in the constitution of the government, nor in law, to make it necessary for the court to meet at any one certain place, and that I know it is his majesty's pleasure I should meet you at Cambridge, I flatter myself you will concur with me in opinion, that I am under obligations to hold the court there; especially if you attend to my commission, which has been published, and is on record; for in express words I am authorized and empowered to exercise and perform all and singular the powers and authorities contained in the commission to the governor, according to such instructions as are already sent, or hereafter shall from time to time be sent to him, or as I shall receive from his majesty. Your exception, therefore, if it has any grounds, ought to be made to the commission, and not to my acts in the due execution of it. There are no other parts of your remonstrance which can with any propriety be applied to me; they extend much further,—to the authority of the king, and of the parliament. I am sure no advantage can arise from
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my engaging in a controversy with you upon those points. I have industriously avoided it. I have avoided giving you any occasion for it: I wish you had avoided seeking the occasion. It is incumbent on me to transmit this remonstrance to be laid before his majesty, when I transmit the other proceedings of the session. I shall do it without any comment: it needs none.

T. HUTCHINSON.

Council Chamber,
Cambridge.

R.—Page 290.

Instructions from the town of Boston to their Representatives. May 15, 1770.

Gentlemen,

THE town of Boston, by their late choice of you to represent them, in the ensuing general court, have given strong proof of their confidence in your abilities and integrity. For no period, since the perilous times of our venerable fathers, has worn a more gloomy and alarming aspect. Unwarrantable and arbitrary exactions made upon the people, trade expiring, grievances, murmurs, and discontents, convulsing every part of the British empire, forbode a day of trial, in which, under GOD, nothing but stern virtue and inflexible fortitude can save us from a rapacious and miserable destruction. A series of occurrences, many recent events, and especially the late journals of the house of lords, afford good reason to believe, that a deep-laid and desperate plan of imperial despotism has been laid, and partly executed, for the extinction of all civil liberty:—and from a gradual sapping the grand foundation, from a subtle undermining the main pillars, breaking the strong bulwarks, destroying the principal ramparts and battlements, the august, and once revered fortress of English freedom—that admirable work of ages—the British constitution—seems just tottering into fatal and inevitable ruin. The dreadful catastrophe threatens universal havock, and presents an awful warning to hazard all, if peradventure, we, in these distant confines of the earth, may prevent being totally overwhelmed and buried under the ruins of our most established rights. For many years past, we have, with sorrow, beheld the approaching conflict;

flict ; various have been the causes which pressed on this decisive period ; and every thing now conspires to prompt a full exertion of our utmost vigilance, wisdom, and firmness :—and as the exigencies of the times require, not only the refined abilities of true policy, but the more martial virtues, conduct, valour, and intrepidity ; so, gentlemen, in giving you our suffrages, at this election, we have devolved upon you a most important trust ; to discharge which, we doubt not, you will summon up the whole united faculties of both mind and body.

We decline, gentlemen, a minute detail of many momentous concerns, relative to which, it is believed, no instructions need be given ; but we shall express our thoughts on such matters, as, we suppose, you will choose to have our explicit sentiments.

A grievance which will early present itself, in the ensuing sessions (and to redress which, you are to take all proper spirited methods), is, that of holding the general court at *Harvard College*, not only against ancient usage and established law, but also against the welfare of that seminary of learning ; the happy advancement of which, this province ever had, and still have, so much at heart.

We would have you, gentlemen, particularly scrutinize into the wise and cautious transactions of our worthy fathers, in 1721. They, it should be known, in that year, though not directly called to weigh the high importance of the question, yet, on this very matter, behaved with a political foresight and sagacious circumspection, truly admirable and worthy imitation : the small pox, then, almost as pestilential as the plague, rendered the meeting of the general court, in Boston, morally impossible : yet so convinced was the governor of the province of his own defect of authority to remove the general assembly out of town, that when all the members daring to attend the court, in that infectious season, were assembled, in the council chamber, unable to make a quorum of the lower house, they were expressly assured, by his excellency, that the proposed adjourning, into the country, should not be drawn into precedent. Accordingly, a reliance doubtless being had on such solemn assurance, no objections appear entered on record against the adjournment, when, through a providential calamity, a transaction of business, in the proper place, was become really impracticable. No proverb is more familiar, than that necessity knows no law ; and the court, without doubt, on this natural consideration, was immediately adjourned out of this town. Yet so universally sensible were the people of that day, and especially the three branches of the legislature, that an act of the whole court, even when such a fatal emergency had forced the adjournment, was thought absolutely requisite to legalize and capacitate for their procedure to publick business :—and accordingly a vote passed the honourable house to that purpose, the same was concurred in by his majesty's council, and approved and
formally

formally assented to, by the commander-in-chief:—all which appears on the publick records of the province. Now we should be glad to be informed, how these proceedings, in essence, sense, and spirit, differ from a full, ample, and final denunciation of the law establishing the seat of government.

We are not ignorant, that in 1728-9, a controversy was forced on relative to this point. This dispute had its rise, like many of modern date, in consequence of ministerial instructions, which, to borrow a phrase of the then house, “are not pleasant to mention.”

We are not unacquainted, that his majesty’s attorney and solicitor-general were, at this time, consulted, relative to our legal seat of government. We also know, that the then governor (Burnet) treating upon the same subject, informed the house of representatives, that “the king determined the point, according to the attorney and solicitor-general’s opinion, that the sole power of dissolving, proroguing, and adjourning the general court or assembly, as to time or place, is in his majesty’s governor, and that the reasons against it, from the tenth of king William the third, had no real foundation; there being no clause in that act, laying any such restraint upon the governor.”

Here, it should be well observed, is not barely a tacit, but an express declaration, that “the sole power of dissolving, &c.” is devolved entirely “upon,” and exclusively vested “in the governor.” From hence, in our opinion, this consequence unavoidably follows, that no instructions, orders, or mandates whatever ought to direct and control such power, solely, in the governor. For it is not merely absurd in theory, and most mischievous in practice, that an authority incapacitated, by distance, to judge of local and other critical circumstances, should have a power to fix such an important movement; but moreover it is palpably contrary to the plain words of the preceding determination.

We freely own, it would have given us more satisfaction to have seen this opinion under the hands of those lawyers. But we would, here, gentlemen, direct you carefully to notice and remember, that as we always expect to defend our own rights and liberties, so we are unalterably fixed to judge for ourselves of their real existence, agreeable to law. Yet as we believe this same opinion is far from being well grounded, so we now offer a few comments thereon, for your future consideration. But let it be recorded, that we enter upon this task, protesting against the pretended right or power of any crown lawyer, or any exterior authority upon earth, to determine, limit, or ascertain all or any of our constitutional or charteral, natural or civil, political or sacred, rights, liberties, privileges, or immunities. These words, “there being no clause, in that act, (10th of William) laying any such restraint upon the governor,” contained in the aforecited opinion, are, we conclude, intended to convey, that as the king’s prerogative to remove the general court,

court, at pleasure, is not by express words taken away, so such a power remains inherent in the crown. We do allow, indeed, that the king's prerogative was once thought "a topick too delicate and sacred to be profaned by the pen of a subject; that it was ranked among the *arcana imperii*; and like the mysteries of the *bona dea*, was not suffered to be pried into by any but such as were initiated in its service: because, perhaps, the exertion of the one, like the solemnities of the other, would not bear the inspection of a rational and sober inquiry." We also have learned, that there hath been a British potentate, who dared "to direct an English parliament to abstain from discoursing of matters of state; that even that august assembly ought not to deal, to judge, or to meddle with, majesty's prerogative royal." And James the first, with his high notions of the divinity of regal sway, more than once laid it down in his speeches, that—"as it was atheism and blasphemy in a creature to dispute what the deity may do, so it is presumption and sedition in a subject to dispute what a king may do in the height of his powers: good Christians," he adds, "will be content with GOD's will, revealed in his word; and good subjects will rest in the king's will, revealed in *his law*."—Surely, when such mystical jargon, such absurd and infamous rant was thus openly denounced, in a realm famed for understanding, freedom, and true magnanimity, nothing, except an ineffable contempt of the reigning monarch, diverted that indignant vengeance, which would otherwise have made his illustrious throne to tremble and hurled the royal diadem from his forfeit head.

The king's prerogative, in the largest extent, includes, only, certain rights and privileges, which, by law, the king hath as a third power of the common wealth, intrusted with the execution of laws already in being. This prerogative our law pronounces to be solely governed by the laws of the land; those being the measure, as well of the king's power, as the subject's obedience: for as the laws assert and bound the just rights of the king; so they likewise declare and maintain the rights and liberties of the people: hence it is adjudged law, that all prerogatives must be for the advantage and good of the people; otherwise, such pretended prerogatives are not to be allowed by law. Even our crown lawyers will inform us, "that one of the principal bulwarks of civil liberty, or (in other words) of the British constitution, is the limitation of the king's prerogative by bounds so certain and notorious, that it is impossible he should ever exceed them, without the consent of the people, on the one hand, or without, on the other, a violation of that original contract, which in all states impliedly, and in ours most expressly, subsists between the prince and the subject.—And from a consideration of the extent and restrictions of the king's prerogative, this conclusion will evidently follow, that the powers which are vested in the crown by the laws of England, are necessary for the support of society; and do not

not intrench any further on our natural rights, than is expedient for the maintenance of our civil. Sir Henry Finch, under Charles the first, though he lays down the law of prerogative in very strong and emphatical terms, yet qualifies it with a general restriction, in regard to the liberties of the people.—“The king (says he) hath a prerogative in all things, that are not injurious to the subject; in them all it must be remembered, that the king’s prerogative stretcheth not to the doing of any wrong.” And, finally, the best definition of the prerogative, which our law books afford, is, “that discretionary power of acting for the publick good, where the positive laws are silent;—and if this discretionary power be abused to the publick detriment, such prerogative is exerted in an unconstitutional manner.”

We, gentlemen, have been thus particular in our instructions on this head, because we apprehend, that this point of prerogative, through great inattention, hath been much mistaken; and also because every other matter, set forth in the aforesaid opinion of Mr. Attorney and Solicitor-General, has been irrefragably confuted by divers judicious replies of succeeding houses of our assembly. Now the clear law just laid down (to the true spirit of which we do order you punctually to adhere) proves beyond a cavil, that, if the late removal of our general court was not against plain provincial law, yet that such removal is not only unwarrantable by the principles of crown law, but is directly repugnant to the fundamental institutions even of prerogative law:—for will any one be so weak, or wicked; nay, will even a crown lawyer, for his stipend or pension, have the front publicly to maintain, that the late alteration of the seat of our general assembly is “for the advantage and good of the people;” or “for the necessary support of society;” or that this assumed “prerogative stretcheth not to any wrong?” Now if all this, and much more, is not maintained, then waiving of provincial law, relative to the seat of government, we, with good authority, say, that the holding the general court, from its ancient and proper station, is unwarrantable, unconstitutional, illegal, and oppressive.

We have given you, gentlemen, our full sentiments touching this important concern, because you ought not to be at any loss, how to conduct yourselves herein, conformable to the judgment of your constituents.—But had we not, here, spoken so largely; nay, had the express letter of the law been less favourable, and were it possible to ransack up any absurd, obsolete notion, which might have seemed calculated to propagate slavish doctrines, we should by no means have been influenced to forego our birthrights. For the prime and only reason which originated all law, but more particularly and expressly the prerogative, was the general emolument to the state; and, therefore, when any pretended prerogatives do not advance this grand purpose, they have no legal obligation; and when any strictly just prerogatives are exerted to promote

mote any different design, they also cease to be binding. Indeed, even a solicitor-general of majesty, in an express treatise "of the king's prerogative," will teach us,—“that mankind will not be reasoned out of the feelings of humanity; nor will sacrifice their liberty by a scrupulous adherence to those political maxims, which were originally established to preserve it.”

The despicable situation of our provincial militia, you will make the object of your peculiar attention, and as it is apparent, from what putrid source this decline of military emulation hath flowed, we press, that such animated steps may be taken, as shall speedily remove this just reproach from the land. When every method is obstinately pursued to enervate with foreign luxuries, every artifice practised to corrupt, in order to enslave; when we are denied a free, constitutional exercise of our rights, as men and citizens; when high-handed invasions are made on our property, and audacious attempts to intimidate not only from resistance, but complaint; surely the constitutional watchmen and sentinels of our liberties are asleep upon their stations, or traitors to the main body, if they do not rouse and rescue from this insidious plot.

As a voluntary and laudable renunciation of a baneful commerce has naturally occasioned a general stagnation of trade; and as the true riches of a people are numbers and industry, we warmly recommend to you such measures, as will tend to increase population, encourage industry, and promote our own manufactures; and as this is a very pacifick political device for the defeat of our malicious foes, we presume it may be less obnoxious to the virulent slander of ministerial dependants:—but these salutary methods of genuine policy ought never to exclude or supersede the more open, manly, bold, and pertinacious exertions for our freedom.

One of the most weighty matters, which attracts our affection, and lies deep in the heart of every sensible and honest American, is the firm and lasting union of the colonies: there is no one point which ought more to engage your affectionate zeal. Our enemies, well knowing the consequence of this great acquisition, have bent their whole force to render it abortive. Without the least foundation, jealousies have been insidiously infused, diabolical falsehoods forged, idle tales propagated, little discords fomented; and every engine, that fraud could invent, and hardy villains manage, has been set to work, in order to retard, if not utterly overthrow, this desirable attainment. But all hath not done. The eyes of our worthy brethren, through the continent, are open.—Yet as we know the plotting malice, inveteracy, and indefatigable labour of the desperately wicked, we strongly inculcate, that you be zealous to keep up a cordial intercourse with our sister colonies; and, as our interests are so apparently inseparable, nothing but an intimate communion is requisite to cement our political and natural attachment.

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We have, for a long time, beheld, with grief and astonishment, the unwarrantable practice of ministerial instructions to the commanders-in-chief of this province. It is high time, gentlemen, for this matter to be searched into and remedied.

Such an enormous stretch of power, if much longer unchecked, will eventually annihilate the essentials of all civil liberty. It is repugnant to the very first principle of true government, (which was alone instituted for the good of the governed,) that a remote power, not only much disconnected, but often different in interest, should undertake, at pleasure, to control, nay command, in affairs of the last moment, for the benefit and relief of the people :—a power, three thousand transmarine miles distant, not only ignorant of our true welfare, but, if perchance discovered, interested to oppose it ; not only attempting to oppress, but actually oppressing ;—that such a power should be allowed, wantonly, to proscribe patricians and plebeians ;—at will, to fix the residence of our parliament ; to order that parliament when, and how to proceed, and where to retire ; at one time to forbid the best improvement of our own produce ; at another time, effectually to force us to purchase foreign merchandise ;—again, as it were, sword in hand, to demand our property ; and, anon, to forbid our own disposal of a certain part of it :—these are doctrines and political solecisms, which may take root and spring up, under the meridian of modern Rome ; but we trust in GOD, will not flourish in the soil and climate of British America. We, therefore, strictly charge you, not to grant any supplies to the instruments of government, if, through their defect, or misapplication, the grand ends, for which we support and obey our rulers, are not accomplished.

We, also, recommend to you carefully to inquire into the state of criminal prosecutions, in our executive courts ; and endeavour to revive the ancient method of appointing the attorney-general, agreeable to the charter : for we believe, that such a step will be attended with very salutary consequences, in the advancement of publick justice, the punishment of offenders, and the general good order of the province.

Our choice of you, gentlemen, to represent us, at this hazardous juncture, is a sufficient evidence of our great dependence on your wise, honest and steady conduct :—we, therefore, leave all other matters to your best discretion and judgment, till we shall see fit to give further instructions :—we greatly confide ; that you will bear in strong remembrance, the hardships and sufferings of our pious fathers to find out and purchase this remote asylum from ecclesiastical persecution and civil tyranny ; that, inspired, by their glorious example, you will vigorously repel, even unto the uttermost, the insults and violences of internal and external enemies to our peace. We remind you, that the further nations recede and give way to the gigantic strides of any powerful despot,

despot, the more rapidly will the fiend advance to spread wide desolation;—and then should an attempt be made to stay his ravaging progress—"the dogs of war, let loose and hot for blood,—rush on to waste and havock." *Obsta principiis* is the maxim to be held in view: it is now no time to halt between two opinions: the demands of fraud, violence, and usurpation are insatiable: it is, therefore, no season to stand listening to subtle allurements, deceitful cajolings, or formidable threatenings. We, therefore, enjoin you, at all hazards to deport (as we rely your own hearts will stimulate) like the faithful representatives of a freeborn, awakened, and determined people;—who, being impregnated with the spirit of liberty in conception, and nurtured in principles of freedom from their infancy, are resolved to breathe the same celestial æther, till summoned to resign the heavenly flame by that omnipotent GOD who gave it.

Per order of the committee,

RT. DANA.

Attest.

WILLIAM COOPER, *Town Clerk.*

S.—Page 303.

Principal Messages of the Council and House of Representatives to Lieutenant-Governor Hutchinson, on the removal of the General Assembly from Boston to Cambridge; with his Answers thereto. 1770.

In the House of Representatives, June 6, 1770.

May it please your honour,

THE house of representatives have taken into their consideration the state of the province with regard to the moving the general assembly out of the town of Boston; and by a majority of ninety-six out of one hundred and two members present resolved,—

That the convening, holding, and keeping the great and general court out of the said town of Boston, to the manifest injury of the province, and the great inconvenience of the members of both houses, without any necessity, or the least probability of serving any one good purpose, notwithstanding the prayers, entreaties, remonstrances, and protestations of this and the former house to the contrary, is a very great grievance.

And that it is by no means expedient to proceed to business while the general assembly is thus constrained to hold their session out of the town of Boston.

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And as there are matters now lying before the assembly of very great importance, which they are very desirous of entering upon and completing, they humbly pray that your honour would be pleased to remove the great and general court, to its ancient, usual, and only convenient seat, the town-house in Boston.

His Honour's Answer.

Gentlemen of the House of Representatives,
I think it my misfortune, that so great a majority of your house, as 96 in 102, should appear to differ from me in sentiment upon any publick measure. I have told you, that I have not the least doubt of the legality of my adjourning or proroguing the court to any town in the province. The place, as well as time of its meeting, is left to the governor. The governor is the servant of the king, and, by his commission, is to govern the people according to the charter, and according to such instructions as he shall, from time to time, receive from the king. Without a violation of my instructions, I cannot now remove the court from Cambridge to Boston: I am afraid of incurring his majesty's displeasure if I should do it. I am as sensible as you can be, that there are many important matters lying before the court: I am sensible also, that the necessity of their being acted upon is so great, that, even upon your own principles, you may be as fully justified in proceeding to act upon them, as the house of the last year could be justified for the business they did, or as you will be able to justify yourselves for what you have already done the present session. Does it not appear to you of necessity, that the act of the province, which requires the treasurer to issue his warrant for levying a tax of more than 80,000*l.*, should be repealed in part? Will it be safe for you to leave Castle William and Fort Pownall without any establishment? Are you willing the act for limitation of suits at law, which has been repeatedly suspended, should now take place?—to omit the mention of many other laws, which I believe you judge necessary to be continued or revived. Would you be willing the enemies of our happy constitution should have it in their power to say, that when the governor had caused the general court to be convened, pursuant to the power reserved to him by the charter, the house of representatives refused to do business, because he had convened it at Cambridge, and, in their opinion, without any necessity, or the least probability of serving any good purpose? Would not the construction of my conduct be, if I should carry you to Boston after this message to me, that I had given up to the house of representatives the powers reserved by the charter to the crown?

In 1747, or in 1748, when the court-house in Boston had been consumed by fire, the major part of the then house of representatives was averse to rebuilding it, and disposed to build a house for

for the general court in some town in the country. Being then one of the representatives of the town of Boston, I used my influence in every way I could with propriety in favour of rebuilding the court-house in Boston, but finally could prevail thus far and no farther:—the house, upon the question whether a grant should be made for rebuilding the court-house in Boston, was equally divided, and I, being then speaker of the house, gave my casting vote in favour of the town. I have still a very good affection for the town of Boston. I was then the servant of the town, and know I was acting the mind of my constituents. I am still satisfied that I did my duty. I now consider myself as the servant of the crown. I know his majesty's pleasure, and I am doing my duty in acting according to it, and if you should finally refuse to do business at Cambridge, which I hope you will not, all the evil consequences will be attributed to you and not to me.

Council Chamber,
Cambridge, June 7, 1770.

T. HUTCHINSON.

In Council, 12th June, 1770.

To the Honourable Thomas Hutchinson, esq., lieutenant-governor and commander-in-chief of the province of Massachusetts Bay.

The address of his Majesty's Council of the said province.

May it please your Honour,

It would give us great pleasure to proceed upon the publick business, agreeable to the recommendation in your honour's speech at the opening of the present session. But as, in consequence of a motion made in council, that your honour should be requested to adjourn the general court to Boston, you informed the board you could not do it consistent with your instructions, it is first incumbent on us to observe, that the province charter ordains, "that the governor for the time being shall have full power and authority from time to time, as he shall judge necessary, to adjourn, prorogue, and dissolve the great and general court." This power is a full power: it is wholly in the governor, and to be exercised as he shall judge necessary. It cannot, therefore, be subject to the control of instructions. Such a power and such a subjection of it are incompatible. The moment it is so subjected, it ceases to be a full power; and the governor is no longer the judge with regard to the exercise of it. It is, therefore, a palpable contradiction to suppose it under such a control; and in fact, (judging of it by the charter only) it is controllable by nothing but the convenience and safety of the general court, and the general utility of the province. For these ends that power was lodged by the crown, exclusive of itself, in the governor solely. It is true no mention is made of the place of such adjournment or prorogation: the same is also true as to time; but they are both necessarily

necessarily included in the idea of adjourning and proroguing: and if these last be wholly and exclusively in the governor, which is very evident, the time and place must be also.

There is nothing absurd or unreasonable in this construction of the above-cited clause of the charter; for it is impossible, in the nature of things, that the crown, at the distance of a thousand leagues, should be able, understandingly, and with a knowledge of present circumstances, upon which the fitness of such a measure depends, to exert that power. It is therefore fit and necessary that such exclusive power should be vested in its representative here. And the said clause does in fact make such an investiture.

It cannot be said, that "this sole power is intended for no other purpose than to exclude both the other branches of the court from any share in it," because there is not a word in the charter that even intimates such an intention; and because the clause giving the power is expressed in terms vesting that power solely and exclusively in the governor.

With regard to the convening the general court, the charter ordains and grants, "That there shall and may be convened, held, and kept by the governor, for the time being, upon every last Wednesday in the month of May, every year for ever, and at all such other times as the governor shall think fit and appoint, a great and general court."

The time of convening in May is fixed, and therefore not alterable by instructions. Other times of convening are to be such as the governor shall think fit. He is made the judge of the fitness of such other times; which, therefore, in regard to time, excludes the control of instructions. As to place, although the charter be silent, the convening must have relation to place as well as time: the right of judging of the latter implies the same right in respect to the former; and the reasons for both are the same, as well as for the adjourning, proroguing, and dissolving the court, which it is evident are exclusively in the governor. The power is the same as to all those particulars: and it is fit it should be so: for the governor, being in the province, must have the best opportunities of knowing what the general convenience, safety, and utility require: it must be reasonable, therefore, to suppose that such an exclusive power was intended by the charter to be lodged in him; and, in fact, it is by the said clauses very perspicuously lodged. Hence it is (admitting the act for establishing the form of the writ for calling the general court to be out of the question) that, after long experience had determined Boston to be the most convenient and fit place for the meeting of the general court, all the governors of the province, except Mr. Burnet, from the date of the charter, to the last year, have convened the general court at Boston, excepting in a few cases, wherein the safety of the general court, or the publick utility, made it proper to convene the court elsewhere: and in those cases the removals of the court were justified

tified by the respective reasons for them. "The power of calling parliaments in England, as to precise time, place, and duration, is certainly a prerogative of the king, but still with this trust, that it shall be made use of for the good of the nation, as the exigencies of the times, and variety of occasions shall require." The power of calling the general court, in like manner for the good of the province, is, by the charter, vested in the governor for the time being. But considering the several acts of general court, whereby a court-house, which has been several times built for accommodating the general court, and a commodious, elegant dwelling-house, and other accommodations for the residence of the king's governor, have been provided at Boston at a great publick expense—considering also the act "for establishing the form of the writ and precept for calling a great and general court," whereby it appears, that in the writ, precept, and return, the town-house in Boston is mentioned to be the place where the general court is appointed to be convened, held, and kept—the proceedings also of governor Shute and the assembly in 1721, whereby it appears the governor declared, that the adjournment from Boston should not be drawn into precedent; and a resolve was pressed by the whole court, validating and confirming the acts of that court: which proceedings clearly manifest their apprehension that Boston was the place established by law, for the governor's convening and holding the general court,—when these acts are considered, if they do not amount to a strictly legal establishment of the place for convening and holding the general court, they must at least furnish (in our humble opinion) a rule by which the governor ought to conduct himself in that regard; and from which he may not depart, but in cases of exigency.

When exigencies happen, of which every one can judge, they afford a sufficient reason for deviating from the rule, and the deviation will not, nor can be complained of.

Governor Burnet's conduct in convening the general court out of Boston, cannot be deemed an acknowledged or constitutional precedent to justify a similar conduct; because it was not acquiesced in, but remonstrated against, by the house of representatives; and because it was not founded on the only reason, on which the prerogative of the crown can be justly founded, the good of the community.

In governor Belcher's time, when in consequence of instructions he removed the general court to Salisbury, the removal was, "for the more convenient carrying into execution a commission for settling the line between this province and New Hampshire."

Here convenience was the reason for the removal. It was convenient that the assemblies of both provinces, which were then under the administration of the same governor, should be as near each other as might be, for effecting the settlement of the line between

between the two provinces ; and it was not only convenient, but the general good of both required such a settlement.

So long as prerogative is exercised for the real good of the community, which the community must feel and will always acknowledge, it is seldom examined, whether that exercise be strictly legal or not : but that omission does not take away the right of examining, whenever prerogative is exercised for a different purpose.

In the present case, when every reason, arising from convenience, safety, and utility, demonstrates and urges the fitness of the court's sitting at Boston, the convening and keeping it elsewhere, contrary to the mind of the two houses, and the province in general, we humbly apprehend, is an exercise of the prerogative, if not against law, yet certainly against ancient usage, and unwarranted by the reason which supports all prerogative, namely, the publick good.

" We are sensible the governor is servant of the king, and by his commission is to govern the province according to charter, and according to such instructions as he shall from time to time receive from the king." Those instructions, however, must be understood to be such as do not militate with, or in any degree vacate the charter, otherwise the charter would be annihilable at pleasure : from whence it would follow, that it neither was, nor is in the power of the crown to grant any charter whatever, vesting in the grantees any durable privileges, much less such as are granted by the charter of this province, which are perpetual. But we hold it clear to be law, that the crown had and hath such a power : and it is equally clear, that their late majesties king William and queen Mary, for themselves, their heirs, and successors, did, by their charter, in the third year of their reign, grant to the inhabitants of this province, and to their successors thenceforth for ever, all the powers and privileges in the said charter mentioned ; one of which is, that the governor for the time being shall convene, adjourn, prorogue, and dissolve the general court, as in the two clauses above quoted : which clauses, for the reasons aforesaid, we humbly apprehend vest in the governor, for the benefit of the said inhabitants, an exclusive right for those purposes ; and therefore that no instructions can supersede or control that right, which is a beneficiary grant to the people, without injuring them, and so far vacating the charter.—Your honour has observed very justly, " that his majesty never intended his instructions should supersede or control the law." This is and must be true also with respect to the charter : because it is the great law of the constitution, and is the foundation of all the laws in the province ; and because his majesty is just, has a paternal affection for his people, and never intended his instructions should subject them to any unnecessary inconvenience, much less infringe their rights,

We

We therefore earnestly request, that, for his majesty's service, the ease and happiness of your honour's administration, the convenience of the general court, the utility and satisfaction of the province in general, in pursuance of the intention and spirit of divers acts and laws of the province, pursuant to the usage (under both charters) of more than a hundred years standing; but more especially pursuant to the full and exclusive powers vested in the governor by the present charter, your honour will please to adjourn or prorogue the great and general court to its ancient and constitutional place, the town-house in Boston.

Lieutenant-Governor's Answer.

Gentlemen of the Council,

You seem, as far as I can collect from your address, to decline proceeding in your legislative capacity upon the publick business. You have expressed your sense in very strong terms, that I ought not to have caused the general court to convene at Cambridge, in consequence of instructions, and that it is very necessary to the publick good, that it should be convened at Boston.

I have "thought fit, and have appointed," that the general court should convene at Cambridge. I have done no more than what the charter authorizes me to do. If I have done it merely in consequence of instructions, and from a sense of my obligation to what appears to me to be his majesty's pleasure, I shall, notwithstanding, be justified; for the crown, neither by charter, nor in any other way, hath ever divested itself of the right of instructing the governor in what manner this power, delegated to him, shall be exercised. The practice of giving instructions, which began with the charter, and which has continued near fourscore years, I think should have been sufficient to prevent the council from taking exception to them.

If, without regard to any signification of his majesty's pleasure, I had in my own judgment thought it fit and necessary, that the court should be convened at Cambridge, it would now be to no purpose for me to tell you so; for although you admit it to be a part of the prerogative, that I should convene the court at such time and place as I judge to be most fit, yet you have a reserve, for you have explained away all the prerogative, and removed it from the king and his representative, and made yourselves and the people judges when it shall be exercised, and in the present case have determined that it is not fit that it should be exercised.

I will not engage in a dispute with you upon these points. I think it enough for me to tell you, that I have not the least doubt of the right of the crown to control the governor by instructions, or other signification of the royal pleasure; that I believe

believe it to be for the benefit of the people, that a governor should be under this control; that the present set of instructions for the governors of this province are wisely framed for the advantage of the province; that I have no instructions at present, nor have I reason to expect any, militating with the charter, nor with any law of the province. I must therefore adhere to them. As his majesty's council for the province, I shall consult you upon every occasion, and your advice will have great weight with me; but I must finally judge for myself of the fitness and expediency of exercising the powers devolved upon me, by virtue of my commission.

I am not able to comply with your request to adjourn or prorogue the court to Boston. I, therefore, earnestly recommend to you to proceed without further delay, upon the publick business of the province.

Cambridge,
June 15, 1770.

T. HUTCHINSON.

Lieutenant-Governor Hutchinson's Speech. July 25, 1770.

Gentlemen of the Council, and
Gentlemen of the House of Representatives,

Pursuant to the direction in the royal charter, I caused writs to be issued for convening a great and general court or assembly the last Wednesday in May. You met together at time and place, and the house of representatives proceeded to the choice of their speaker and clerk, and the council and house by joint ballot proceeded to the choice of councillors for the year ensuing. Both the council and house requested me to adjourn or prorogue the court to Boston, and gave several reasons against sitting in any other place. The house expressly refused to proceed upon any further business, and repeatedly desired that, unless I would remove the court to Boston, they might be allowed to return to their respective homes. I could not, consistent with my duty to the king, remove you to Boston. To continue you sitting was continuing a burden upon the people without any benefit. For their ease I prorogued the court for four weeks. From a regard to their interest, and because the publick business will not admit of further delay, I meet you at the time to which you stood prorogued. I meet you at Cambridge, because I have no reason to think that there has been any alteration in his majesty's pleasure, which, I doubt not, was determined by wise motives, and with a gracious purpose to promote the good of the province; and I must renew my earnest recommendation to you, to proceed without delay upon such affairs as lie before you.

The illegality of holding the court any where except in the town of Boston, I think you will no longer insist upon. I know of nothing to support you, except the form of a writ for calling the
assembly,

assembly, and upon the force of this you have the opinion of the attorney and solicitor-general in the following words, *That the sole power of dissolving, proroguing, or adjourning the general court or assembly, either as to time or place, is in his majesty's governor; and that the reasons against it, from the act of the tenth of king William, have no real foundation, there being no clause in that act laying any such restraint upon the governor; but in the form of the writ, the word Boston is mentioned, which must be understood by way of instance or example only, and not to limit the power the crown has of summoning or holding general courts or assemblies at any place, much less of adjourning them from one place to another after they were summoned; which report was accepted by the king in council. And although this form of a writ was afterwards brought by the house of representatives as an objection against holding the court in Salem, in the year 1728, yet they did not think it sufficient to justify them in refusing to do business; and the council for that year, who are allowed to have been men of integrity and superior understanding, as well as of the first families and estates in the province, in a message to the house, express their sense in the following words, viz. Touching the adjournment, they apprehend it improper and inconvenient to make any doubt of the validity thereof; and they are ready to join with the honourable house in proceeding to do the proper and necessary business of the province.* From that time I have never known it suggested, until the present day, that the general court, by charter or by law, is confined to the town of Boston. I have given you one instance, in the year 1747, which makes it probable that the house of representatives rather chose the court should sit elsewhere; and I may add another in the year 1754, when a committee of the house was appointed to consider of, and report a proper place for a court-house at a distance from Boston.

Your next objection, that I act in consequence of instructions, has still less colour. Instructions relative to any matter not unconstitutional must be obligatory upon me. My commission makes them so. I have no authority to act, but what I derive from this commission, and I must act in conformity to my instructions, or not at all; and I think I may safely say, that there is not one of you, who, if he was in my station, would venture to depart from them.

The only remaining exception is this, that admitting it to be legal, and a part of the prerogative, the other branches have nevertheless a clear right to inquire into the exercise of this power, and to judge for themselves whether it be wisely and beneficially, or imprudently and arbitrarily exercised, to "remonstrate"—to "make a stand"—and "finally to refuse to do business." The actual inconveniences which you have enumerated from sitting at Cambridge, can easily be removed, or they are so inconsiderable, that a very small publick benefit will outweigh them.

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The house of representatives mention an inconvenience which may arise from the use of this part of the prerogative, because it gives power to the governor "to carry the assembly from one extreme part of the province to another, till he shall have worried them into compliance with some arbitrary mandate, to the ruin of their own, and their constituents' liberties." The same exception may be made to the use of every other part of the prerogative, for every part is capable of abuse, and so is every authority or trust whatsoever. I will, however, assure you that I have never received any arbitrary mandates. I have no design myself; I know of no "fixed design to harass you, in order to bring you into a compliance with any arbitrary measures;" I have nothing to lay before you but the common business of the province, which is necessary for the general interest of the people. Consult this interest in every constitutional way. Do it with as much deliberation as the importance of every case shall require; I will patiently wait the result of your debates. Do it with as much diligence and despatch as you please; and I will give you no interruption, nor occasion any delay.

But pray consider this last exception, and the effect of a concession to it.

You allow that the appointment of a place for holding the court is a part of the prerogative, but you refuse or neglect to do business any where except in Boston; for this prerogative, you say, is to be exercised for the publick good, and you do not think it for the publick good that the court should sit any where except in Boston. His majesty thinks it for the publick good, that the court should sit in Cambridge. If your opinion is to prevail against his majesty's opinion, to what purpose was this, or any other reserve in the charter, made to the crown?

You consider the charter as a compact between the crown and the people of the province. Shall one party be held to the compact, and not the other? The crown, by charter, grants as a privilege to the people, that a great or general court or assembly shall be held every last Wednesday in May for ever. You would have thought me culpable, and very justly, if I had deprived the people of this privilege, by refusing to issue writs for convening the court on the last Wednesday in May, or by refusing to do my part of the particular business for which it is then convened. By the same charter the crown reserves, as part of the prerogative, the power of adjourning, proroguing, and dissolving the great and general court or assembly. Conformably to this reserve, I have prorogued you to this time and place. If you had refused to meet, or should refuse to do business, now you are met, would you not deprive the crown of the exercise of the prerogative, and fail of performing your part of the compact? The house of representatives say they are ready to answer for all the ill consequences which can be attributed

attributed to them, and yet they seem to have been sensible of the danger from a failure of the same nature; for they acknowledge "they proceeded to the election of councillors, that the enemies of our constitution might not have it in their power to say, that by an omission they had forfeited our invaluable charter." At the same time they refused to do any other business, because "none lay before them of such necessity as that omitting it would endanger the constitution. Let me observe to you, gentlemen, that it is not the importance of the business omitted, but it is the refusal of the two houses to comply with what the charter requires of them, which our enemies will take advantage of, and which will endanger the constitution; and your refusing or neglecting to do business now, will be as certain an instance of your non-compliance with what your charter requires of you, as if you had refused to proceed to the election of councillors in May last.

If you shall persist in your refusal, I must prorogue you to some future time. Without further signification of his majesty's pleasure, it is not in my power to remove you to Boston. But I flatter myself you will not persist. You will not leave it in the power of your enemies to hurt you. I am sure you have friends who will think themselves happy if you do not put it out of their power to serve you. Your compliance can be no benefit to our sovereign, any further than as he interests himself in the happiness of his subjects. I am not thus importunate with you from any view to my private or personal advantage, for, if I am faithful in the discharge of my trust, I shall have the same approbation whether I am successful or not. It is the interest of the people only which is at stake. By persisting in your refusal, you are most effectually diserving this interest. You are even rendering more difficult the accomplishment of what you profess to desire and pursue.

Council Chamber,
Cambridge, July 25, 1770.

T. HUTCHINSON.

In the House of Representatives, July 31, 1770.

May it please your honour,

The house of representatives, having duly attended to your speech to both houses at the opening of this session, and maturely considered the several parts of it, have unanimously, in a full house, determined to adhere to their former resolution, "that it is by no means expedient to proceed to business, while the general assembly is thus constrained to hold the session out of the town of Boston." Upon a recollection of the reasons we have before given for this measure, we conceive it will appear to all the world, that neither the good people of this province, nor the house of representatives, can be justly charged with any ill consequences that may follow it. After the most attentive and repeated examination

mination of your speech, we find nothing to induce us to alter our opinion, and very little that is new and material in the controversy. But as we perceive it is published, it may possibly be read by some who have never seen the reasons of the house; and as there are specious things contained in it, which may have a tendency to make an unhappy impression on some minds, we have thought proper to make a few observations upon it.

You are pleased to say, "you meet us at Cambridge, because you have no reason to think there has been any alteration in his majesty's pleasure, which you doubt not was determined by wise motives, and with a gracious purpose to promote the good of the province." We presume not to call in question the wisdom of our sovereign, or the rectitude of his intentions; but there have been times when a corrupt and profligate administration have ventured upon such measures as have had a direct tendency to ruin the interest of the people, as well as that of their royal master.

The house have great reason to doubt, whether it is, or ever was his majesty's pleasure that your honour should meet the assembly at Cambridge, or that he has ever taken the matter under his royal consideration; because the common and the best evidence in such cases is not communicated to us.

It is needless for us to add anything to what has been heretofore said, upon the illegality of holding the court any where except in the town of Boston. For, admitting the power to be in the governor to hold the court in any other place when the publick good *requires* it, yet it by no means follows, that he has a right to call it in any other place, when it is to the manifest injury and detriment of the publick.

The opinion of the attorney and solicitor-general has very little weight with this house in any case, any further than the reasons which they expressly give are convincing. This province has suffered so much by unjust, groundless, and illegal opinions of those officers of the crown, that our veneration or reverence for their opinions is much abated. We utterly deny that the attorney and solicitor-general have any authority or jurisdiction over us,—any right to decide questions in controversy between the several branches of the legislature here. Nor do we concede, that even his majesty in council has any constitutional authority to decide such questions, or any other controversy whatever, that arises in this province, excepting only such matters as are reserved in the charter. It seems a great absurdity, that when a dispute arises between the governor and the house, the governor should appeal to his majesty in council to decide it. Would it not be as reasonable for the people to appeal to the body of their constituents to decide it? Whenever a dispute has arisen within the realm, between the crown and the two houses of parliament, or either of them, was it ever imagined that the king in his privy council

council had authority to decide it? However, there is a test, a standard common to all,—we mean, the publick good. But your honour must be very sensible that the illegality of holding the court in any other place besides the town of Boston, is far from being the only dispute between your honour and this house. We contend that the people and their representatives have a right to withstand the abusive exercise of a legal and constitutional prerogative of the crown. We beg leave to recite to your honour, what the great Mr. Locke has advanced in his treatise of civil government upon the like prerogative of the crown. “The old question, says he, will be asked in this matter of prerogative, who shall be judge when this power is made a right use of?” And he answers; “Between an executive power in being with such a prerogative, and a legislative that depends upon his will for their convening, there can be no judge upon earth, as there can be none between the legislative and the people, should either the executive or legislative, when they have got the power in their hands, design or go about to enslave or destroy them. The people have no other remedy in this as in all other cases, where they have no judge on earth, but to appeal to heaven. For the rulers, in such attempts, exercising a power the people never put into their hands (who can never be supposed to consent that any body should rule over them for their harm), do that which they have not a right to do. And when the body of the people, or any single man is deprived of their right, or under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment. And therefore, though the people cannot be judge, so as to have by the constitution of that society any superior power to determine, and give effective sentence in the case; yet they have, by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind where there lies no appeal on earth, viz., to judge whether they have just cause to make their appeal to heaven.” We would, however, by no means be understood to suggest, that this people have occasion at present to proceed to such extremity.

Your honour is pleased to say, “that the house of representatives, in the year 1728, did not think the form of the writ sufficient to justify them in refusing to do business at Salem.” It is true they did not by any vote or resolve determine not to do business; yet the house, as we read in your honour's history, “met and adjourned from day to day without doing business;” and we find by the records, that from the 31st of October 1728, to the 14th of December following, the house did meet, and adjourn, without doing business; and then they voted to proceed to the publick and necessary affairs of the province, “provided no advantage be had or made, for or by reason of the aforesaid removal (meaning the
removal

removal to Salem), or pleaded as a precedent for the future." Yet your honour has been pleased to quote the conduct of that very house as a precedent for *our* imitation. We apprehend their proceeding to business, and the consequences of it, viz., the encouragement it gave to governor Burnet to go on with his design of harassing them into unconstitutional compliances, and the use your honour now makes of it as an authority and a precedent, ought to be a warning to this house to make a determined and effectual stand. Their example, though respectable, is not obligatory upon this house. They lived in times when the encroachments of despotism were in their infancy. They were carried to Salem by the mere caprice of governor Burnet, who never pleaded an instruction for doing this—an instruction from a ministry who had before treated them with unexampled indignity—an instruction which they were not *permitted* to see. They had no reason to apprehend a fixed design to alter the seat of government to their great inconvenience and the manifest injury of the province.

We are not disposed to dispute the understanding, integrity, families, and estates of the council in 1728. We believe them to have been such, that if they were now upon the stage they would see so many additional, and more weighty reasons against proceeding to business out of Boston, that they would fully approve of the resolution of this house; as well as of what has been lately advanced by their successors, who are also gentlemen of understanding, integrity, fortune, and family, in the following words,—"governor Burnet's conduct in convening the general court out of Boston, cannot be deemed an acknowledged or constitutional precedent, because it was not founded on the only reason on which the prerogative of the crown can be justly founded, the good of the community." We can only add, that the right of the province having been of late years most severely attacked, has induced gentlemen to examine the constitution more thoroughly, and has increased their zeal in its defence.

You are pleased to adduce an instance in 1754, in addition to that in 1747, which you say "makes it probable, that the house of representatives rather chose that the court should sit elsewhere, when a committee was chosen to consider of and report a proper place for a court house at a distance from Boston." We beg leave here to observe, that both these are instances of the house's interesting themselves in this affair, which your honour now claims as a prerogative. If the house were in no case to have a voice, or be regarded, in choosing a place to hold the court, how could they think of building a house, in a place, to which they never had been, and probably never would be called?

While the house have been from time to time holding up to view, the great inconveniences and manifest injuries resulting from the sitting of the assembly at Cambridge, and praying a removal
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to Boston; it is with pain that they have heard your honour, instead of pointing out any one good purpose which can be answered by it, replying that your *instructions* will not permit you to remove the court to Boston. By a royal grant in the charter, in favour of the commons of this province, the governor has the sole power of adjourning, proroguing, and dissolving the general court. And the wisdom of that grant appears in this, that a person residing in the province must be a more competent judge of the fitness of the time, and we may add, the place of holding the court, than any person residing in Great Britain. We do not deny that there may be instances, when the commander-in-chief ought to obey the royal instructions; and should we also admit that in ordinary cases he ought to obey them, respecting the convening, holding, proroguing, adjourning, and dissolving the general court, notwithstanding that grant; yet we clearly hold, that whenever instructions cannot be complied with, without injuring the people, they cease to be binding. Any other supposition would involve this absurdity in it, that a substitute by means of instructions from his principal, may have a greater power than the principal himself; or, in other words, than a representative of a king who can do no wrong, by means of instructions may obtain a right to do wrong. For that the prerogative extends not to do any injury, never has been and never can be denied. Therefore this house are clearly of opinion, that your honour is under no obligation to hold the general court at Cambridge, let your instructions be conceived in terms ever so peremptory, inasmuch as it is inconvenient and injurious to the province. As to your commission, it is certain that no clause contained in that, inconsistent with the charter, can be binding. To suppose, that when a grant is made by charter in favour of the people, instructions shall supersede that grant, and oblige the governor to act repugnant to it, is vacating the charter at once, by the breath of a minister of state.

Your honour thinks you may *safely* say, "there is not one of us, who, if he was in your station, would venture to depart from the instructions." As you had not the least shadow of evidence to warrant this, we are sure you could say it with *safety*; and we leave it with your honour to determine, how far it is reconcilable with *delicacy* to suggest it. In what particulars the holding the general court at Cambridge is injurious to us and the province has already been declared by the house, and must be too obvious to escape your honour's observation. Yet you are pleased to tell us that "the inconveniencies can easily be removed, or are so inconsiderable that a very small public benefit will outweigh them." That they are not inconsiderable every day's experience convinces us; nor are our constituents insensible of them. But how they can be easily removed, we cannot conceive, unless by removing the court to Boston. Can the publick offices and records, to which we are under the necessity of recurring almost every hour, with

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any safety or convenience to the publick be removed to Cambridge? Will our constituents consent to be at the expense of erecting a proper house at Cambridge, for accommodating the general court, especially when they have no assurance that the next freak of a capricious minister will not remove the court to some other place? Is it possible to have that communication with our constituents, or to be benefited by the reasoning of the people without doors here, as at Boston? We cannot but flatter ourselves, that every judicious and impartial person will allow that the holding the general court at Cambridge is inconvenient and hurtful to the province; nor has your honour ever yet attempted to shew a single instance in which the province can be benefited by it. No good purpose which can be answered by it, has ever yet been suggested by any one to this house. And we have the utmost confidence that our most gracious sovereign has no desire to hold the general court at any place inconvenient to its members, or injurious to the province; but rather, that he will frown upon those, who have procured its removal to such a place, or persist in holding it there.

We are not indeed sure, that the ministry caused the assembly to be removed to Cambridge, in order to worry them into a compliance with any arbitrary mandate, to the ruin of our own or our constituents' liberties: but we know that the general assembly has in times past been treated with such indignity and abuse by the servants of the crown, and a wicked ministry may attempt it again.

Your honour observes, that "the same exception may be made to every other part of the prerogative, for every part is capable of abuse." We shall never except to the proper use of the prerogative. We hold it sacred as the liberty of the subject. But every abuse of it will always be excepted to, so long as the love of liberty, or any publick virtue remains. And whenever any other part of the prerogative shall be abused, the house will not fail to judge for themselves of the grievance, nor to exert every power with which the constitution hath intrusted them, to check the abuse of it, and redress the grievance.

The house had expressed to your honour their apprehension of a fixed design, either to change the seat of government, or to harass us, in order to bring us into a compliance with some arbitrary mandate. Your honour says, that you "know of no fixed design to harass us," &c. Upon which we cannot but observe that if you did not know of a fixed design to change the seat of government, you would not have omitted so fair an opportunity to satisfy the minds of the house, in a matter of such importance to the province. As to your very condescending and liberal professions, of exercising patience, or using despatch, as would be most agreeable to us, we shall be very much obliged to your honour, for the exercise of these virtues, whenever you shall see cause to
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remove us to our ancient and established seat : but these professions can be no temptations to us, to give up our privileges.

Your honour is pleased to say, "we consider the charter as a compact between the crown and the people of this province :"—and to ask a question, "shall one party to the compact be held, and not the other ?" It is true, we consider the charter as such a compact, and agree that both parties are held. The crown covenants, that a great and general court shall be held, every last Wednesday in May for ever : the crown therefore, doubtless, is bound by this covenant. But we utterly deny that the people have covenanted to grant money, or to do business, at least any other business than choosing officers and councillors to complete the general court, on the last Wednesday in May, or any other day or year whatever. Therefore this house, by refusing to do business, do not deprive the crown of the exercise of the prerogative, nor fail of performing their part of the compact.

Your honour would, doubtless, have been culpable, had you refused to call a general court on the last Wednesday in May : and the house might have been equally culpable, if they had refused to choose a speaker and clerk, or to elect councillors, whereby to complete the general court : for, in case of omission in either part, a question might arise, whether the people would have had a legislative. When the general assembly is thus formed, they are empowered by the charter, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties, or without. But the charter nowhere obliges the general court to make any orders, laws, statutes, or ordinances, unless they at that time judge it conducive to the publick good to make them : much less does it oblige them to make any laws, &c. in any particular session, year, or number of years, whenever they themselves shall judge them not to be for the publick good. Such an obligation would not leave them the least colour of freedom, but reduce them to a mere machine,—to the state the parliament would have been in, if the opinion of the two chief justices and the three puisne judges had prevailed in the reign of Richard the second, "That the king hath the governance of parliaments, and may appoint what shall be first handled, and so gradually, what next, in all matters to be treated of in parliament, even to the end of the parliament ; and, if any person shall act contrary to the king's pleasure made known therein, they are to be punished as traitors"—for which opinion those five judges had judgment as in case of high treason. Your honour will allow us to ask whether the doctrine contained in your question, viz. "If you should refuse to do business, now you are met, would you not deprive the crown of the exercise of the prerogative, and fail of performing your part of the compact ?" which implies a strong affirmation, is not in a degree the very doctrine of chief justice Tresilian, and the four
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other judges just now mentioned? By convening in obedience to his majesty's writ, tested by your honour, and again, at the time to which we are prorogued, we fully have submitted to the prerogative, and performed our part of the contract.

This house has the same inherent rights in this province, as the house of commons has in Great Britain. It is our duty to procure a redress of grievancas; and we may constitutionally refuse to grant our constituents' monies to the crown, or to do any other act of government, at any given time, that is not affixed by charter to a certain day, until the grievances of the people are redressed. We do not pretend that our opinion is to prevail against his majesty's opinion; we never shall attempt to adjourn, or prorogue, or dissolve the general court;—but we do hope that our opinion shall prevail against any opinion whatever of the proper time to make laws and to do business. And by exerting this power which the constitution has given us, we hope to convince your honour and the ministry, of the necessity of removing the court to Boston.

All judicious men will allow that the proper time for the house to do their part of the business of the province, is for the house to judge of and determine. The house think it is not, in the present circumstances of the province, a proper time to do this business, while the court is constrained to hold their session out of Boston. Your honour is of a different opinion. We have conformed to this opinion, as far as the constitution requires us, and now our right of judging commences. If your honour's or even his majesty's opinion concerning this point, is to prevail against the opinion of the house, why may not the crown, according to the Tresilian doctrine, as well prescribe and require what business we shall do, and in what order.

The house are still ready to answer for all the ill consequences which can be justly attributed to them; nor are they sensible of any danger from exerting the power which the charter has given them, of doing their part of the business in their own time. That the province has enemies who are continually defaming it and their charter, is certain: that there are persons who are endeavouring to intimidate the province from asserting and vindicating their just rights and liberties, by insinuations of danger to the constitution, is also indisputable. But no instance happened, even in the execrable reign of the worst of the Stuart race, of a forfeiture of a charter, because any one branch of a legislative, or even because the whole government under that charter, refused to do business at a particular time, under grievous circumstances of ignominy, disgrace, and insult; and when their charter had explicitly given to that government the sole power of judging of the proper season and occasion of doing business. We are obliged, at this time, to struggle with all the powers with which the constitution has furnished us, in defence of our rights, to prevent the most valuable
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of our liberties from being wrested from us, by the subtle machinations and daring encroachments of wicked ministers. We have seen of late innumerable encroachments on our charter; courts of admiralty extended from the high seas, where by the compact in the charter they are confined, to numberless important causes upon land; multitudes of civil officers, the appointment of all which is by charter confined to the governor and council, sent here from abroad by the ministry;—a revenue, not granted by us, but torn from us;—armies stationed here without our consent;—and the streets of our metropolis *crimsoned* with the blood of our fellow subjects. These, and other grievances and cruelties, too many to be here enumerated, and too melancholy to be much longer borne by this injured people, we have seen brought upon us by the devices of ministers of state.—We have seen and heard, of late, instructions to governors, which threaten to destroy all the remaining privileges of our charter.—In June 1768, the house by an instruction were ordered to rescind an excellent resolution of a former house, on pain of dissolution: they refused to comply with so impudent a mandate, and were dissolved: and the governor, though repeatedly requested, and although the exigencies of the province demanded a general assembly, refused to call a new one, until the following May. In the last year, the general court was forced to give way to regular troops, illegally quartered in the town of Boston, in consequence of instructions to crown officers, and whose main guard was, most daringly and insultingly, placed at the door of the state-house; and afterwards they were constrained to hold their session at Cambridge.—The present year, the assembly is summoned to meet, and is still continued there in a kind of duress, without any reason that can be given, any motive whatever, that is not as great an insult to them and breach of their privilege, as any of the foregoing. Are these things consistent with the freedom of the house? or could the general court's tamely submitting to such usage be thought to promote his majesty's service? Should these struggles of the house prove unfortunate and ineffectual, this province will submit, with pious resignation, to the will of Providence; but it would be a kind of suicide, of which we have the utmost horror, thus to be made the instruments of our own servitude.

We beg leave, before we conclude, to make one remark on what you say, "That our compliance can be no *benefit* to our sovereign, any further than as he interests himself in the happiness of his subjects."

We are apprehensive, that the world may take this for an insinuation very much to our dishonour; as if the benefit of our sovereign is a motive in our minds against a compliance. But as this imputation would be extremely unjust, so we hope it was not intended by your honour. We are obliged, however, in justice to ourselves and constituents, to declare, that if we had any reason to believe

believe that a compliance would be any, the least benefit to our sovereign, it would be a very powerful argument with us. But we are, on the contrary, fully persuaded, that a compliance at present would be very injurious and detrimental to his majesty's service.

The Lieutenant-Governor's Answer to the foregoing Reply to his Speech to both Houses at the opening of the Session.

Gentlemen of the House of Representatives,
You have sent me a message in which you profess to make a few observations upon some specious things contained in my speech to the council and house, which, you say, may have a tendency to make an unhappy impression upon some minds.

I shall make some general remarks upon your message, not from any expectation of prevailing with you, at this time, to alter resolutions which you have come into, but from a desire to convince the good people, whom you represent, that your reasons for refusing to do business are very insufficient.

You make a doubt whether it is, or ever was his majesty's pleasure that the court should meet at Cambridge. I have no doubt of it. You give this reason for your doubt, that my orders are not communicated to you. I know it to be his majesty's pleasure that I should not communicate them, and the restraint I am under appears to me to be founded upon wise reasons. You speak of times when there has been a corrupt and profligate administration, of daring encroachment of wicked ministers, of devices of ministers of state; and you suppose instructions to governors to be acts of ministers, and not of the king; particularly you call an instruction in June 1768, an *impudent* mandate. It may not be presumed that you would have done this, if you had known it to be an order from his majesty: I wish, however, that you had spared this coarse and indecent epithet.

I cannot help observing to you, that you have no sufficient grounds to suppose instructions to be the acts of the minister, and not the king. I know of no ministerial mandate or instructions. The affairs of America, and of this province in particular, are become too serious to escape his majesty's immediate attention, and your message which I am now answering, will be laid before his majesty, immediately upon its being received by his secretary of state, who, by virtue of his office, has free access, and who receives the signification of his majesty's pleasure, and will give no directions but such as he knows to be agreeable thereto, and every order from the secretary of state must be supposed to come mediately from the crown, and ought not to be treated with indignity and contempt.

The freedom you have used with the characters of the attorneys and solicitors-general will, I fear, likewise bring dishonour upon you.

you. Those offices, for more than fifty years past, in almost every instance, have been filled with persons of the highest reputation for learning and integrity, and many of them have been advanced to the first stations in the courts of law and equity, which are and have been for ages past the ornament and glory of the English nation.

Although you do not think the report of an attorney and solicitor general, in the case in dispute between us, nor the confirmation of such report by the king in council to be any authority for you, yet I must govern myself thereby, until I have better reasons against it than any you have given in your message.

Your quotation from Mr. Locke, detached as it is from the rest of the treatise, cannot be applied to your case. I know of no attempt to enslave or destroy you, and as you, very prudently, would not be understood to suggest that this people have occasion at present to proceed to such extremity as to appeal to heaven, I am at a loss to conceive for what good purpose you adduce it.

You find nothing in your records which does not agree with what I have said of the proceedings of the house at Salem, in governor Burnet's administration, nor did I cite the instance for any other purpose than to shew that they were very careful to avoid a resolution, which you, as I think, too suddenly came into, nor does my speaking respectfully of the council of that day, lessen the council of the present day, who, although they have discovered a desire, in their message to me, that the court should be removed to Boston, yet declare that they have never refused to do business at Cambridge, and I have now no doubt, that if you had done your part of the publick business, they would have joined and done their part also.

From the appointment of a committee by the house, in 1764, to consider of a proper place to build another court house, you infer that the house was to have a voice in determining the place where the court should meet. You are very sensible that a vote for building a court house, which incurs expense upon the people, must, by the constitution, originate with the house of representatives. If one or divers other court houses, besides that in Boston, had been built, the governor's right to call the court to which he pleased, or to any other place, remained inviolate, the votes of the representatives for building a court house notwithstanding.

You then proceed to call in question my obligation, or right, to observe my instructions. And you say, that by a royal grant in the charter *in favour of the commons* of the province, the governor has the sole power of adjourning, proroguing, and dissolving the general court, and, you think, it discovers the wisdom of the grant, because a person residing in the province is a more competent judge of the fitness of the time and place of holding the court, than any person residing in Great Britain, and a grant thus made

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in favour of the people, cannot be superseded by instructions, without vacating the charter by the breath of a minister of state.

Your making use of the word *sole* instead of *full* (the word in the charter) must proceed from inattention. I must observe to you, that many cases may happen to make it necessary to alter the place of holding the court, which a person in Great Britain may as well judge of, as one who is upon the spot; and, perhaps, the present case is such a one. But where you find that the power of adjourning, proroguing, and dissolving the court, was granted to the governor *in favour to the commons*, I am utterly at a loss. The charter is undoubtedly a royal grant, in favour to the people of the province of every order. They were, at the time of the grant, living in the colony, under a form of government which would not admit of an adjournment, prorogation, or dissolution of the general court, without the act or consent of the council and representatives. They were soliciting by their agents a confirmation of their privileges. The king determines that, for the future, the governor shall have the full, or *sole* power, if you choose it, of adjourning, proroguing, and dissolving the general court. Is it not very extraordinary that the house of representatives should now assert, that depriving them of a share in this power, and confining it to the governor alone, was a grant *in favour of the commons*? The governor, under the old form, had no negative in any case, but now, no acts of council or assembly are valid, to which he denies his consent. May it not with equal reason be said, that this power was also reserved to the governor *in favour of the commons*? It is very certain that, unless it be so, there will be no supporting the doctrine, that the crown has divested itself of its right of controlling the governor.

You are sensible that this can hardly be supported, for you allow that, in some cases, instructions may be binding, and you do not seem very averse from admitting that in ordinary cases, notwithstanding this singular grant *in favour of the commons*, the commander-in-chief ought to obey instructions respecting the convening and holding the court; but you are clear, that when they cannot be complied with, without injuring the people, they cease to be binding, otherwise, the representative of a king who can do no wrong, by means of instructions may obtain a right to do wrong.

I am not contending, gentlemen, for a right to do wrong, and I am very willing to understand the maxim, that the king can do no wrong in the commonly received sense of it, that his servants alone shall be punished for the wrong they do, and not avail themselves of a royal order or instruction for their justification; and, if I was convinced that removing the court from Boston was an encroachment upon your natural or constitutional rights, I would not urge my commission or instructions to justify the doing it; but I must make my own reason and judgment the rule, and not

not yours, and, until I am convinced of the encroachment, must conform to my instructions.

You think that I ought not to have deemed the inconveniences of your sitting out of Boston inconsiderable, or that they can easily be removed, and you ask me if the publick offices and records can with any safety or convenience be removed to Cambridge. I think the expense of one or two days' wages of the members would have removed all that are necessary to Cambridge, and kept them there with safety and convenience the whole session, and, if we may judge from the sessions at Concord, you would do your business with so much greater despatch at Cambridge than at Boston, as to shorten the session more than two days. You ask whether I think your constituents would be at the expense of building a court house at Cambridge. I am not certain what their present disposition is, but I know there is no necessity for it. You have the use of a very commodious room without any inconvenience to the college, in this time of vacation, and, if you think the benefit which the students receive by attending your debates is not equal to what they may gain in their studies, they may easily be restrained, and then your sitting in the college will be little or no inconvenience at any other time. You add, "is it possible to have that communication with our constituents, or to be benefited by the reasoning of the people *without doors* in Cambridge as at Boston?" In whatever town the court shall sit, the representatives of that town must have opportunity beyond the rest of the house for consulting their constituents. The consulting of a transient person passing through any town cannot afford any great advantage, nor ought, constitutionally, the opinion of such persons to have any influence upon your votes and determinations; for, if I have any just idea of a house of representatives, in the English constitution, you are sent by your constituents to assemble together, that they may have the benefit of your reasoning *within doors*, and not the reasoning of any particular town or person *without doors*.

Because, when I told you that I knew of no fixed design to harass you, I did not add, nor to change the seat of government, you determine that I am privy to such a design, but I am not. If there be any such design, I think your proceeding to business at this time would have the best tendency of any thing in your power to cause it to be laid aside.

You allow that the charter is a compact, and that both parties are held, but you say that the people never covenanted to grant money, or to do any business except choosing officers and councillors, to complete the general court on any day or year whatsoever. I never said that they did. I have never had the least dispute with you, except upon the *place* of your meeting. The *time* there has been no exception to. It has been a matter of indifference to me personally. I have endeavoured to find out when
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it would be most convenient for you, that I might oblige you ; and the business of the court I have left to you to arrange and act upon, when, and in what order you thought proper.

In my speech to you, I ask you, if you had refused to meet, or should refuse to do business now you are met, would you not deprive the crown of the exercise of the prerogative, and fail of performing your part of the compact. Without the least colour for it, you make a forced, unnatural construction of my words, and determine that I am directing the several parts of the business you shall do, and the time of doing them, and that I hold the doctrine of Tresilian, in degree, " that the king hath the governance of parliament, and may appoint what shall be first handled, and so gradually, what next, in all matters treated of in parliament, even to the end of parliament, and if any person shall act contrary to the king's pleasure made known therein, they are to be punished as traitors." I have ever treated your messages with the utmost fairness. I have passed over in silence many passages in them extremely exceptionable, and, in return, you have wrested my expressions to a sense in which no man alive could suppose that I intended them. Had Tresilian advanced no more than I have done, he would never have met with any blame. Had he only asserted, that the king, by virtue of his prerogative, had a right to assemble the parliament at such time and place as he thought proper, and that if the commons should refuse to assemble, or to do the necessary business of the kingdom, when they were assembled, they would, upon the principles of the English constitution, fail of performing what was incumbent on them, he would never have been called in question for his doctrine ; and yet *this* is all I have said to you. I am willing to attribute this injurious treatment to inadvertence in the body of the house, by their passing upon so long and important a message, and which the committee took so many days to prepare, with so little debate after it was reported.

After all your objections, you tell me that you did convene in obedience to his majesty's writ,—that you met again at the time to which you stood prorogued,—that you conformed to my opinion so far as the constitution requires you,—and now your right of judging commences. Consider then how the case now stands. You are held by the constitution to convene at time and place appointed, but you are under no obligations to do any business, except at such times as you think proper, and, if you do not like the *place*, you will exercise your right, and determine that it is not a proper *time*. Can any thing render the prerogative more futile ? Let me ask you whether, if your agents, when they were soliciting the charter, had been held to say, how far they acknowledged his majesty's prerogative to convene the court at such time and place as he thought proper, you imagine the charter would have passed the seals. Neither your more thorough examination
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of the constitution, nor your extraordinary zeal for its defence, of which you speak, can alter the original frame and intention.

Your main reserve, if it could be admitted, that whensoever the prerogative shall be exercised in a manner not for the publick good, of which you are to be judges, it ceases to be a prerogative, is unanswerable. In all controversies, as soon as one party is allowed to be the sole judge, the knot is cut, and there must be an end of strife. But to this I spoke fully at the opening of the session.

You are still ready "to answer for all the ill consequences which can justly be attributed to you." The damages may be irreparable, and it may be out of your power to compensate them. The people will then see what was their real interest, but they will see it too late.

I cannot omit taking notice of a remark at the close of your message upon an observation I made, that "your compliance can be no benefit to his majesty." I had no other intention than to express my sense that the people *solely* can be affected by your refusal to do business. You had no room to suppose that I intended by it to set you in an unfavourable light, as disaffected to his majesty, and so induced to a non-compliance with his royal pleasure.

The remaining parts of your message having no immediate relation to this controversy, but respecting matters which concern the colonies in general, and the authority of the supreme legislature, upon which, in language very much the same, the house of representatives have repeatedly enlarged, which has from time to time been transmitted to be laid before his majesty, I will make no reply to them, for I have no inclination to multiply controversies with you; and those subjects have been so fully discussed that it is not probable you, or I, shall be able to cast any new light upon them.

I called you together that you might further consider upon what, by the constitution, as appeared to me, it was your duty to do; and to give you an opportunity of doing it. You came, very soon, to a resolution to do no business. If you had stopped there, I should have prorogued you without much delay; for I have no intention to compel you to any measure by *duress*, nor to cause any unnecessary charge upon the people; but you appointed a committee to answer my speech, which answer I did not receive until the eighth day after the meeting of the court. I have taken one day only for my reply, and shall now order a further prorogation. It will be happy for the province, if, when you again assemble, you can join with me in what is necessary for its real interest.

Council Chamber,
August 3, 1770.

T. HUTCHINSON.

APP. T.

T.—Page 342.

*Protest of the Assembly against removing them from
Boston to Cambridge, by virtue of an instruction.
June 19, 1771.*

HISTORY furnishes us with an instance of an act of parliament passed, giving the force of laws to the king's proclamations; but this being directly subversive of the constitution, was soon repealed. Yet, since that period, an act has been laboured for, to give the force of law to the king's instructions to the governors of the colonies. And though it was not effected, some governors have appeared to consider such instructions as laws, not only to themselves but to the people: whereas nothing can be more clear, than that neither proclamation nor instruction ought to have any such force, either in regard to the governor or the subject here.

And, although it may be within the prerogative of the crown, in cases of plain necessity, to summon a parliament to some other place than Westminster; and so of a governor of this province, in like cases of plain necessity, to convoke a general assembly to some other place than Boston, its accustomed ancient place, and where alone provision is made for it; yet, if a British king should call a parliament, and keep it seven years, in Cornwall, however his ministry, as usual, might shift for themselves, their master and his affairs would be irretrievably embarrassed and ruined. And a governor of this province, who, in order to harass the general assembly into unconstitutional and unconscionable measures, should convene and hold them in the county of Berkshire or Lincoln, would render himself and his administration justly ridiculous and odious.

There is nothing more plainly to be distinguished than power, right, and prerogative. It is the king's prerogative to pardon all crimes, from trespass to high treason; but if the king should pardon *all* criminals, there would be an end of his government. The commons have the sole right to give and grant, or refuse to grant taxes; but, if they should refuse to give *any thing*, there would be also an end of government. Should a king call a parliament but once in seven years, and, on its meeting, instantly dissolve it, and so repeatedly, a few such repetitions would ruin him, and be deemed a total dissolution of the social compact. Should a governor of this province annually convene a general assembly, and before, or immediately after the election of councillors, dissolve such assembly, as the conduct would be similar, the inferences and consequences must also be alike. For such exercises

exercises of the prerogative could not be deemed mistakes, but must be construed as voluntary and corrupt abuses of the prerogative, and a total perversion of the powers of which it consists. Such instances, it may be said, would be manifest abuses of power and prerogative. And it is most clearly, in our opinion, an abuse of the power vested by charter in the governor of this province, for him, from time to time, unnecessarily, or merely in obedience to an instruction, without exercising that judgment and discretion of his own, which by charter he is empowered and is in duty bound to exercise for the good of the province, and not for the preservation of his place, to convene and hold the general assembly out of the town of Boston; which is not only its ancient, but also, on various accounts, the most convenient place, more especially as ample provision is there made for holding the assembly in costly and commodious buildings, and no part of the necessary provision is made in any other place in the province.

By the charter, the governor, with other civil officers, is to be supported by the free gift of the general assembly; and it would be dangerous for so important a trust as that of convening, adjourning, proroguing, or dissolving the general assembly to be placed in any one who is not thus supported by the free grants of the people. The safety of the people requires that every power should have a check. By the charter, therefore, it is ordained that the full power of convening, adjourning, proroguing, and dissolving the assembly shall be vested in the governor, who is to reside within the province, and is and ought to be supported by the free grants of the people. The king, by the charter, has covenanted and granted, that the governor shall exercise this power "*as he shall think fit*," or "*judge necessary*," and not another. An endeavour, therefore, to *restrain* the governor in the exercise of this power, is clearly an attempt to infringe and violate the charter. And the governor, in our opinion, cannot, consistent with the trust and duty of his office, refuse or delay to hold the assembly in the place which is evidently the most convenient until he shall obtain "*express leave*" from the king or his minister. It is so far forth suspending the effect and depriving the people of the benefit of the royal grant made to them in the charter. To restrain the governor in the free exercise of this power, at once reduces him to a mere machine, and deprives us not only of every charter right, but of all freedom. By such restraint a free assembly would be subjugated to arbitrary edicts and mandates; for if an instruction is as obligatory on a governor as some contend for, or can supersede the charter in one instance, it may in a thousand or in all.

Upon the foregoing considerations, this house think it their indispensable duty, in discharge of the sacred trust reposed in them by their constituents, and for the sake of preserving and maintaining as far as may be in their power, the free constitution of the province, in the most explicit manner to protest, and they do accordingly

accordingly protest against all such doctrines, principles, and practices as tend to establish either ministerial or even royal instructions as laws within the province.

And further, this house do particularly protest, and order the same to be entered on the journal, against the present manner of exercising the prerogative in convening and holding the general assembly at Harvard College, in Cambridge, merely by force of instructions, as an intolerable grievance, which ought speedily to be redressed.

It is notorious that former houses have borne this grievance with great moderation, in hopes it would not have been continued. And although the present house is inclined to judge as candidly as possible, of the instructions of administration, yet it is the clear opinion of the house, that if, after all the remonstrances that have been made against this grievance, it should not speedily be redressed, it will then become plain and obvious that the power vested in the governor by the charter for the good of the province is willingly perverted to a very different end.

U.—Page 343.

*Governor Hutchinson's Answer to the foregoing Protest
July 5, 1771.*

Gentlemen of the Council, and of the House of Representatives, I HAVE continued the session longer than has been usual at this season of the year, that you might have the full time you desired for transacting the publick and private business which came before you, and it gives me pleasure to reflect that, in general, a good harmony has subsisted between the several branches of the legislature. In some part of your proceedings, I have not been able to concur in sentiment with you, particularly,

Gentlemen of the House of Representatives, I cannot help disapproving of a certain instrument, which you voted in consequence of a message from me, and which you have caused to be entered upon your journal, and to be printed in the publick newspapers. I am obliged to make some remarks upon it before I put an end to the session, although it has not been addressed to me in the usual form. By this instrument you protest, as you express it, first, against whatever tends to establish ministerial or royal instructions as laws within the province, -and, secondly,

secondly, against holding the court in Cambridge, merely by force of instructions, as an intolerable grievance, which ought speedily to be redressed.

The first part of your protest was altogether unnecessary, and can have no good effect, but may alarm the people when they are in no danger; for, by the tenor of my commission, notwithstanding I am required to follow the king's instructions, I am to make the charter and the laws of the province the rule of my administration, and upon these fundamentals all my instructions are framed; and if ever you shall think that you have ground to accuse me of departing from the charter, and the established laws, I promise you that I will not avail myself of an instruction for my justification or excuse; but if I happen to differ from you upon the construction of the charter, or your laws, you must allow me to govern myself by my own, rather than by your judgment.

The second part of your protest appears to me to be repugnant to what has been admitted for more than fourscore years to be a part of the constitution; for notwithstanding you confine your protest to my removing the court from Boston by force of an instruction, you may with equal reason extend it to any act whatsoever done by force of instructions. I must deal plainly with you, gentlemen, and let you know, that I cannot consider myself at liberty to depart from the king's instructions in any matters which are not repugnant to the charter, and to the established laws, and it is not the *preservation of my place* which influences me, but a sense of my duty to the king, and the preservation of his majesty's just prerogative. It is a new doctrine, advanced by the last assembly, that the king, by reserving to himself the power of nominating and appointing a governor, hath divested himself of the right of instructing him. If this had been the case, why did the assembly, in 1692, thankfully receive Sir William Phipp's commission, which was published at the same time with the charter, and which expressly required him to exercise his trust according to such powers and *instructions* as he should receive pursuant to the charter, and the established laws? Why has every assembly since, until the assembly of the last year, submitted, without any exception, to commissions of the same tenor? In the controversy with governor Burnet in 1728, the assembly would not admit that his instructions should bind them, but they never pretended that they did not bind him.

Your observation that, by the charter, the governor is to convene the court, from time to time, *according to his discretion, or as he shall judge necessary*, and, therefore, that the king's instruction ought not to control him, does not distinguish this case, because every power, where there is no special limitation, is to be exercised *according to discretion, or as shall be judged necessary*. I must further observe to you, that, before the date of your charter governors in the plantations were required to execute their trusts, pursuant

pursuant to the instructions they received from the crown. When the crown by charter reserves to itself the power of appointing a governor, this reserve must be understood to mean a governor under the like restrictions with other the king's governors, unless there be further words to signify the contrary. I know of no such words in the charter.

His majesty expects from me, on the one hand, that I make no invasion upon any of your rights; but then, on the other hand, he enjoins me to give up no part of his prerogative. I know that the messages and resolves of the house the last year, which asserted, that the governor is not held to the observance of this instruction, were very displeasing to the king. I am, therefore, under an additional obligation to bear my testimony against the like assertion.

I would not, however, have laboured to explain points so clear in themselves, if I was not apprehensive that your constituents are liable to be prejudiced in favour of the proceedings of their representatives, and that there is danger, if I had been silent, that this instrument would retard that quiet and contentment, which I doubt not the gentlemen of the house, in general, who voted for it, wish to see fully restored.

I shall only observe, upon your message presented to me this day, in answer to my message to you of yesterday, that whatever may be the rights of the general assembly in matters of taxation, the crown hath certainly reserved to itself the prerogative of disallowing every law of what nature soever; and as the disallowance of a tax act, after it is in part executed, would cause great perplexity, I think that his majesty's instruction pointing out to you, through me, his servant, those parts of your tax acts which he disapproves of, should be considered as an instance of his tenderness and paternal regard to his subjects, and that it is not liable to the least exception. I shall transmit my message, and this your extraordinary answer, to be laid before his majesty.

Gentlemen of the Council, and of the House of Representatives, I have given my consent to the bills and votes which have passed the two houses this session, as far as I could, consistent with my duty to the king, and with the interest of the province.

Upon mature consideration of the grants made to William Bollen, esq., and to the executors of Dennis de Berdt, esq., by the late assembly, I refused my consent. I cannot yet see reason to alter my sentiments, and the objections to my signing the grants made, this session, to the same persons, to which your message of this forenoon refers, are rather increased than lessened.

Council Chamber,
Cambridge.

T. HUTCHINSON.

V.—Page 358.

Report of a Committee of the Assembly, upon the grant of the Governor's salary from the Crown. July 1772.

WHEREAS in and by the charter of this province, the full power to impose and levy proportionable and reasonable rates and taxes, upon the persons of all and every the proprietors and inhabitants of the province, for his majesty's service in the necessary defence and support of his government therein, is vested in the general assembly; and the rates and taxes by them imposed and levied for the purposes aforesaid, are to be disposed of according to such acts as are or shall be in force therein;

And whereas the support of his majesty's governor of the province is one material and most important part of the support of his majesty's government therein;

I. Resolved,—That, by virtue of the full power and authority granted by the charter as aforesaid, the general assembly is the constituted judge of the adequate support of his majesty's governor, and the rates and taxes necessary to be imposed and levied for that purpose; therefore,

II. Resolved,—That the imposing and levying rates and taxes, and making provision for the support of the governor, otherwise than by the grants and acts of the general assembly, is an infraction upon the charter in a material point, whereby a most important trust is wrested out of the hands of the general assembly, and it is deprived of the most important part of legislative power and authority, vested therein by the charter, and necessary for the good and welfare of the province, and the support and government thereof.

III. Resolved,—That the general assembly of this province hath, ever since the charter was granted, from time to time, by their own grants and acts, made suitable and adequate provision for the support of his majesty's governor thereof.

IV. Resolved,—That the governor's having and receiving his support, independent of the grants and acts of the general assembly, is a dangerous innovation; which renders him a governor not dependent on the people, as the charter has prescribed; and consequently not, in that respect, such a governor as the people consented to at the granting thereof. It destroys that mutual check and dependence which each branch of the legislature ought to have upon the others, and the balance of power which is essen-

tial to all free governments. And this house do most solemnly protest, that the innovation is an important change of the constitution, and exposes the province to a despotick administration of government.

And whereas the general assembly hath from the beginning made ample provision for the support of his majesty's governor,

V. *Resolved*,—That the advice given to his majesty that it was necessary for his majesty's service, and the good and welfare of this province, that certain and adequate provision should be made for the support of the governor thereof, otherwise than has been the invariable practice, by the grants and acts of the general assembly, was, in the opinion of this house, either grounded on false information, or it proceeded from a temper inimical as well to his majesty as to the people of this province.

VI. *Resolved*,—That a message go up to his excellency the governor, assuring him that this house is ready to make him the usual annual grant, and other ordinary provision for his support; provided his excellency will accept the same in full consideration "of the ordinary services of government done, or to be done, by him:" and praying his excellency, that if he is determined in his opinion that he cannot, "without his majesty's special permission, accept of any grant from the province, for his support as governor thereof," he would make application to his majesty, that he would be graciously pleased to give further order, that his excellency may without restraint receive his whole support from this government, according to ancient and invariable usage.

W.—Page 360.

Governor Hutchinson's Answer to the above Report.

Gentlemen of the House of Representatives,
IN consequence of my message to you of the 10th instant, you have caused to be laid before me the report of a committee, accepted and ordered to be entered upon your journals. This report contains certain resolves or declarations, which, as I conceive, are not well founded, but, on the contrary, tend to alter the constitutional dependence of this colony upon the crown, and upon the supreme legislative authority of Great Britain.

The sum of these resolves or declarations may be comprised in a few words. You have declared that the support made for the governor by other powers than the legislative authority of this province, is a material infraction upon the charter; that the governor is

is thereby rendered not dependent on the people, as the charter has prescribed, and consequently not, *in that respect*, such a governor as the people consented to; that the mutual check and dependence of the branches of the legislature is destroyed, and the province exposed to a despotick administration. You have likewise asserted, that the assemblies, ever since the charter, have made adequate provision for the support of the governor; that the advice to his majesty, to make provision for this support, proceeded from false information, or from a temper inimical to his majesty and to the people of the province; and you have desired me to make application to his majesty, that I may, without restraint, receive my whole support from this government, according to ancient and invariable usage.

In support of these declarations, you have first alleged that the charter is a solemn contract between king William and queen Mary and their successors on the one part, and the inhabitants of this province for ever on the other.—If you meant no more by a solemn contract than what is implied between the crown, as the granter of certain powers and privileges, and the inhabitants of the colony, as the grantees, by which they acquire a right to the use of those powers and privileges, until the charter, in whole, or in part, shall be legally vacated, I would take no objection; but when you afterwards allege that, by virtue of this contract, a power devolved on the crown of appointing a governor, there is too great room to apprehend that some may suppose this contract to be something of the nature of the *pacta conventa*, or agreements settled by treaty between two independent states; which supposition would have such a dangerous tendency, that it is necessary for me to define very particularly the nature of a charter from the crown upon the principles of the English constitution, and to remind you of the particular circumstances which attended the grant of your charter.

It is a part of the prerogative of the crown, as well as of the power and authority of parliament, to constitute corporations, or political bodies, and to grant to such bodies a form of government, and powers of making and carrying into execution such laws as, from their local, or other circumstances, may be necessary, the supreme legislative authority of the British dominions always remaining entire notwithstanding. Now in order to share in the benefit of this authority, our ancestors, by their agents, did not propose a treaty, nor anything of the nature of the *pacta conventa* which I have before mentioned; but, as subjects of England, first petitioned the parliament, that, by a legislative act, their vacated charter might be restored; and, failing of success, afterwards, to use the words of the present charter, “made their humble application to king William and queen Mary, that they would be graciously pleased to incorporate their subjects in the colony, and to grant and to confirm to them such powers, privileges, and franchises as in *their royal wisdom* should be thought most conducing

to their interest and service, and to the welfare and happy state of their subjects in New England." The powers thus granted were not, as you strangely allege, devolved on the crown by our ancestors, but passed from the crown to its subjects. By this charter, a general court or assembly is constituted; and, among other powers granted to this assembly, are those of making laws not repugnant to the laws of England, and imposing rates and taxes, for the service of the crown, and in the necessary *defence* and *support* of the government. You have taken pains to prove, what would not have been denied, that the support of the governor must be included in the support of the government, and you say, that, by the grant of full power to raise taxes, you have acquired an exclusive right of supporting the governor, and, therefore, the support of the governor by the crown must be an infraction upon the charter. Consider, gentlemen, where this argument will carry you. The same clause which empowers the assembly to tax the people for the *support*, empowers it also to tax for the *defence* of government. The defence and support of government are, in their nature, duties attended with burdens rather than privileges; the powers given to the assembly to tax are in order to compel the performance of these duties. Can it be supposed that this grant of power to compel the people to submit to this burden of taxes, for the defence of the government, should exclude the crown from affording its aid for this defence when it shall be necessary. If you are in danger of being attacked by a foreign power, has the crown deprived itself of the right of ordering a fleet for your defence, and must the colony be lost to this power? And would you, in that case, refuse this aid, because you have an exclusive right of defending the government yourselves? Your charter gives you equal right to this objection in the case of defence, as in the case of support.

Should not so heavy a charge against the crown, as that of making an infraction upon your charter, and wresting out of your hands powers vested in you, have had something more than this shadow of an argument for its support? A support so feeble, that I have no need to call to my aid the act of parliament which enables the crown to do what has been done; and which, if your claim from the charter had been better founded than it is, would have been sufficient to have rendered it of no effect.

If you fail of this exclusive right of supporting the governor, your assertions that the charter prescribes a governor dependent upon the people, and that you have not, in *that respect*, such a governor as the people consented to, is altogether without foundation.

You are equally unfortunate in your notions of the mutual check and dependence which each branch of the legislature ought to have upon the other, as also in the nature of a free government, and of the English constitution.

The

The mutual check which each branch of the legislature ought to have upon the other, consists in the necessity of the concurrence of all the branches, in order to a valid act; and when any one branch withholds this concurrence, it is properly a check upon the other two. So far as this may be said to be a dependence I agree with you. But this is not sufficient for your purpose; for the same check will remain in each branch when the salary of the governor is paid by the crown, as when it is paid by the province. Now this check does not affect the freedom and independence in each branch, which is the glory of the English constitution, and which will not admit that any one should be compelled by the other to any act against its judgment. If I should violate this freedom and independence of the council, or house of representatives, I should justly incur his majesty's displeasure. Is it not reasonable that the governor should be entitled to the like share of freedom and independence, in the exercise of his judgment, with the other branches? That independence, which cannot consist with a free government, and which the English constitution abhors, and which may properly be termed despotism, is a freedom in those who are vested with executive and judicial powers, from the restraint of known established laws, and a liberty of acting according to their own will and pleasure. This restraint, in your constitution, will remain the same, whether the governor receives his salary from the crown or from the province. Thus, by confounding the sense and meaning of the words *check* and *dependence*, you have given a plausible appearance to your argument. This is an artifice which has often been made use of by writers in newspapers, with design to give false notions of government, and to stir up discontent and disorder; but I am far from attributing any such design to the members of the house of representatives in general.

Let me add that the English constitution is founded upon these principles of freedom: the king, lords, and commons have this mutual check upon each other. They are, notwithstanding, altogether free and independent; and that this freedom may be preserved entire in the crown, we find, that, ever since the hereditary revenues have ceased, a revenue, known by the name of the *civil list*, has been established among the first acts of every reign; not temporary, or from year to year, but during the life or administration of the prince upon the throne. I have reason to think, that, if the governors of this colony may be made equally secure of an adequate provision for their support, the crown will never interpose.

You find that the same spirit of freedom runs through the several offices of the English government. The salaries of such persons as are entrusted with the executive and judiciary powers, do not depend upon grants made by the house of commons, in proportion to their abilities, station, and merit, as you say it is essential to a free government that they should do, but certain fixed salaries and emoluments

emoluments are annexed to their offices. Indeed, nothing can be more dissonant than your system from the spirit of the English constitution.

You have made a forced construction of a clause in your charter, and have then made a very essential change in your constitution, that it may agree with this construction.

By your charter, the legislative power consists of three branches, and the consent of the governor is expressly declared to be essential to every valid act of government. You say, notwithstanding, that he is constitutionally dependent upon the people for his support, and that this dependence is intended as a check. This check must be, by withholding his support when, in some case or other, he shall act, or refuse to act, contrary, in your judgment, to the duty of his station. If he gives up his own judgment, and conforms to yours, does not the act in such case cease to be the act of the governor, and become the act of the house of representatives? And will not this *so far* destroy one branch of the constitution?

Let me add farther, if a governor departs from his own judgment and conscience, is he not highly criminal? And will not the house of representatives, which compels him to it, be at least equally guilty with him?

I am sensible, that, when all other exceptions to this representation of your constitution are taken away, you will ask, what security have we then against the oppression of a governor? The answer is obvious. The law and the constitution are your security; if he departs from them, there is a power superior to him, to which he is accountable for his mal-administration. This is all the redress that can consist with the nature of a subordinate government.

No state of government is perfect: if we have all that perfection which the state we are in will admit of, we have no reason to complain. Indeed we have no reason to fear redress from any opposition. So tender has been our most gracious sovereign of the rights of his subjects, that although I should humbly hope for royal forgiveness, in case of inattention to some point of no great importance, which might affect the prerogative, yet I may not expect the forgiveness of any wilful invasion of your liberties.

If, when you declare, that the assemblies, ever since the charter, have made an adequate provision for the support of the governor, you intend a provision suitable to the dignity of his station, and not merely such as, in the judgment of the house, the particular merits of the governor might require, you will not be able to maintain your assertion; on the contrary, it evidently appears, that, in some instances, the support of the governor has been delayed until he has complied with the measures of the assembly, and, in others, defalcations have been made from it in order to effect the same purpose.

If

If you had known the provision made for the support of the governor to have been, as it probably was, in consequence of the advice of his majesty's privy council, you would not have declared, that such advice was founded upon false information, or proceeded from a temper inimical to his majesty, and to the people of this province.

After thus declaring my opinion of your proceedings, and giving you my reasons in support of such opinion, you will not expect that I should make my application to his majesty, agreeable to one of your resolves, and to your message by your committee, to allow me to receive my whole support from this government. Your votes, or resolves, I must transmit to be laid before his majesty.

I have had repeated occasion to make my humble application, that the doings of the house of representatives may be considered in the most favourable light.

I will do the same upon this occasion. From my personal knowledge of the majority of the members of the house, who voted for the acceptance of this report, I am well assured, they have not done it from sinister views and purposes, but that they have been induced to form an erroneous opinion of the rights and powers of the several branches of the legislature. I wish that this may palliate what it is not in my power to justify or excuse.

T. HUTCHINSON.

Province House,
July 14, 1772.

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